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8 SUPREME COURT
9 STATE OF NEVADA

10 RESOURCES GROUP, LLC, a Nevada
11 Limited Liability Company,

CASE NO.: 84992

12 Appellant,

13 vs.

14 U.S. BANK NATIONAL
ASSOCIATION, ND, a national
15 association,

16 Respondent.

17
18 **JOINT APPENDIX VOLUME 5**

19
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1 A Yes.

2 Q And so did you authorize your electronic
3 signature on this document?

4 A I don't recall, but most likely, yes.

5 Q So then at the time in June of 2012, you would
6 have reviewed this including page 3 of 29 on the
7 schedules where you testified the value of the property
8 was \$35,000, correct?

9 MR. BOHN: Well, again, you're using the word
10 testified.

11 MR. BECKOM: Mr. Haddad needs to answer.

12 MR. BOHN: Well --

13 THE WITNESS: I didn't testify to anything.
14 What do you mean by testify?

15 BY MR. BECKOM:

16 Q You said that you declared under penalty of
17 perjury that everything in this was accurate.

18 A And what's the point?

19 Q So I'm just trying to -- What I'm trying to get
20 at here is you previously testified that you thought the
21 property was worth \$5,000, correct?

22 A Yes, as an impaired value.

23 Q But then five months later you testified that
24 it's worth \$35,000.

25 A Yeah, but you should have seen it five months

1 later, fresh paint, new carpet, new tile, new kitchen,
2 you know. And it's worth a lot more money after the
3 eviction, after the repairs, always the properties are
4 worth a lot more money.

5 Q You said that you were the I guess -- You own
6 Great Bridge Properties?

7 A I'm the broker of Great Bridge Properties.

8 Q Broker for Great Bridge Properties. So you
9 oversee everybody?

10 A When you say oversee everybody -- I'm the
11 broker, yes.

12 Q Okay. Do you know Cheryl Van Elsis?

13 A Yeah. She is an independent agent with Great
14 Bridge.

15 Q She is an independent agent with Great Bridge
16 Properties?

17 A Yes.

18 Q Did you retain her at any point in time to
19 perform an appraisal on this unit?

20 A Yeah, I believe. Probably we did. My attorney
21 probably would have. She would have probably even
22 appointed some comparables to that too, correct?

23 Q Okay. And it looks like if you go over to ---
24 it's page 9 of 14 on that appraisal, that she stated that
25 the property was worth \$33,000 correct?

1 A Yes.

2 Q And that's an independent contractor that works
3 with your company, correct?

4 A Yes, but she is independent.

5 Q Okay. It's always a good thing for appraisers
6 to be independent.

7 A Yeah.

8 Q And it looks like that this was filed as part of
9 a portion of your bankruptcy with the court, correct?

10 A Yes.

11 Q Okay. What happened with -- What was the
12 outcome of this bankruptcy? Did you manage to -- Were
13 you trying to cram properties down?

14 A I don't know. You're going to have to ask Ryan
15 Alexander.

16 Q Okay. Do you still have any relationship or
17 affiliation with Mr. Alexander?

18 A I do not.

19 Q Is there any reason for that that you're able to
20 discuss?

21 A No.

22 Q Now, the other thing that I'm like -- There were
23 a lot of -- If you go back to the bankruptcy schedules,
24 there was a lot of -- Go to page 11 of 29. You listed
25 Alessi & Koenig, LLC as having unpaid HOA dues on 4254

1 Rollingstone Drive, an amount unknown. Why?

2 A I don't know. You have to ask Ryan Alexander.
3 He is the bankruptcy attorney. He is the one that filed
4 this. I did not prepare this.

5 Q But you did review it?

6 A I did not prepare it.

7 Q But did you prepare it?

8 A He recommended I sign. I electronically signed,
9 or as you call it, authorized his electronic signature.

10 Q Okay.

11 A I can't say if I reviewed it or not but --

12 Q And it says you testified under penalty of
13 perjury that you thought that there might be unpaid HOA
14 dues on 4254 Rollingstone Drive as of June 2012.

15 A I don't know. You have to ask Ryan Alexander.

16 Q Okay. Do you know what ultimately happened with
17 this bankruptcy filing?

18 A I don't.

19 Q Okay. On page 14 of 29, is this bankruptcy
20 filing still active?

21 A I don't know. I'm not a bankruptcy attorney, so
22 I don't know what are the different, you know, outcomes
23 that could have come out from a bankruptcy filing.

24 Q On page 14 of 29 there is listed an unpaid lien
25 on 4254 Rollingstone Drive from the Law Offices of Les

1 Zieve. Can you tell me what that is?

2 A I cannot, no. No. I would assume that the
3 attorney would have pulled his own record search and
4 named the creditors off of the record search.

5 Q Do you have any reason to believe that Mr.
6 Alexander's record search was inaccurate?

7 A I don't know what to say about that. He does --
8 He would have done his own record search.

9 Q Okay. And then you affirmed his work and record
10 search?

11 A Yes.

12 Q Okay. And you testified that -- It appears you
13 testified that you thought the property was subject to
14 multiple liens.

15 A Again, he would have prepared this.

16 Q Okay. And this was after the HOA foreclosure
17 sale, correct?

18 A What are -- Can I see a copy of the Trustee's
19 Deed? Yeah, when was this filed?

20 MR. BOHN: This is June. The Trustee's Deed was
21 January.

22 THE WITNESS: Okay. Yes. Correct.

23 BY MR. BECKOM:

24 Q Okay. I guess just for posterity's sake, is
25 there any reason -- I think you indicated on here that

1 you thought 4254 Rollingstone Drive was subject to at
2 least three different liens at least through this
3 petition. Is there any reason why that you thought that?

4 A Repeat your question again.

5 Q In this petition which you signed under penalty
6 of perjury you testified at least three times that you
7 thought after the homeowners association sale, that you
8 thought this was subject to at least three different
9 liens. Is there any reason why you thought that?

10 MR. BOHN: I have to object. You keep saying he
11 testified to. He didn't testify to anything. There's
12 representations in the petition but no testimony. You
13 can answer if you know.

14 THE WITNESS: I don't know how to answer that.

15 BY MR. BECKOM:

16 Q So there is no reason why you would be concerned
17 about liens on this property five months after the sale?

18 A There's always a concern. As the Supreme Court
19 stated, you know, never let a creditor go to sale. You
20 file an injunction. You file a TRO. You pay and then
21 argue later. You know, here I consulted with an attorney
22 who said --

23 MR. BOHN: Don't say what the attorney said.
24 That's privileged.

25 THE WITNESS: Okay. Yeah. That's -- It was his

1 advice.

2 BY MR. BECKOM:

3 Q His advice was to put these creditors in your
4 petition?

5 A And to, yeah, file this bankruptcy.

6 Q Okay. Did you ever attempt to do what's called
7 a strip-off on these properties?

8 A I don't know what a -- what that is.

9 Q Did your attorney ever ask you about filing a
10 motion to value?

11 A I don't recall.

12 Q Did Mr. Alexander -- Do you know what that is, a
13 motion to value?

14 A No.

15 Q Okay. So how did you find out that 4254
16 Rollingstone Drive was going to sale?

17 A Before the auction I checked the Nevada Legal
18 News and the Clark County Recorder's Web site.

19 Q What did you check on the Clark County
20 Recorder's Web site?

21 A The Notice of Default, the Notice of Sale that
22 would have, you know, the recording information.

23 Q Are you able to pull those off independent of
24 going down to court?

25 A They would have the parties' names and then they

1 would have the dates.

2 Q So you just checked grantor and grantee index?

3 A Exactly.

4 Q Okay.

5 A The Nevada Legal News would have the Trustee's
6 Sales calendar.

7 Q So those would be the only three things you
8 would check would be the Trustee's Sales calendar and
9 then the just brief look at the Recorder's Web site to
10 determine what you were going to do before you got there?

11 A Yes.

12 Q Is there anything that you would see on the
13 Recorder's Web site typically on these sales that would
14 like make you think that maybe you shouldn't purchase the
15 property?

16 A A \$40,000 tax lien.

17 Q Why would a \$40,000 tax lien make you not want
18 to purchase the property?

19 A Because it would be superior to an NRS 116 lien.

20 Q Would you -- Are we talking about federal tax
21 or --

22 A No. Clark County treasurers tax, property tax.

23 Q Property tax. Did you ever check any of the
24 CC&Rs or anything like that?

25 A No.

1 Q Why?

2 A There's not enough time.

3 Q Okay. Can you take a look at ---

4 A And they're trumped by law as well.

5 Q Were you of that opinion in January of 2012?

6 A I can't recall, but I'm sure.

7 Q Was there ever a time when you weren't of that
8 opinion?

9 A No.

10 Q Did you burst into this world upon the first day
11 of creation thinking that CC&Rs are trumped by statute?

12 A Ever since I was a baby.

13 MR. BOHN: He was born in 1991.

14 THE WITNESS: I was born in UCIOA, U-C-I-O-A.

15 BY MR. BECKOM:

16 Q Take a look at USB0164 in that book, please.

17 MR. BOHN: The CC&Rs here?

18 MR. BECKOM: Uh-huh.

19 MR. BOHN: Okay.

20 BY MR. BECKOM:

21 Q So it says right there in section 11, "The lien
22 and the assessments provided for herein shall be
23 subordinate to the lien of any first mortgage."

24 What is your understanding of the word
25 subordinate?

1 A Well, subordinate means flip, but in this
2 context the CC&Rs have been trumped by law.

3 Q I don't think I asked about the operation of the
4 statute. I think I asked about what your understanding
5 of subordinate is. And you said it was to be flipped?

6 A Yes.

7 Q Okay. So it says, "The lien and the assessments
8 provided for herein shall be subordinate to the lien of
9 any first mortgage."

10 So your understanding of that is that the
11 assessment lien was going to be flipped with the first
12 mortgage, at least according to the CC&Rs?

13 A I didn't read it but --

14 Q Okay.

15 A Like I said, I don't read these CC&Rs before the
16 sale.

17 Q Okay. And it goes on to say, "The sale or
18 transfer of any lot shall not affect the assessment
19 lien."

20 So would you buy a property -- I mean, like
21 would you buy a property at a foreclosure sale if it
22 stated that your lien had been -- the lien had been
23 subordinated?

24 A Would you live in a homeowners association that
25 had no rights to foreclose and ensure a hundred percent

1 of the homeowners that a hundred percent of the
2 homeowners will be paying the delinquent assessments, and
3 if they were to go to sale, the bank needs to be
4 responsible, and if this language was effective, then the
5 bank wouldn't care about bringing the dues current and
6 therefore the homeowners association wouldn't necessarily
7 have the power to foreclose because nobody would show up
8 to bid when the CC&Rs are subordinate to the first deed
9 of trust, which means that you can't have an effective
10 collection policy, which means that 20 percent of the
11 homeowners are going to live for free forever until the
12 bank decides to strategically not delay their
13 foreclosures anymore? Would you live in a homeowners
14 association like that? I think this is why the law is --
15 says what it says.

16 Q Well, thank you for that. I don't live in an
17 HOA for multiple reasons.

18 A But if you did.

19 Q And nor will I ever. Notwithstanding -- It's
20 too much of my family's libertarian strategy.

21 A NRS must -- NRS 116 must work. And for it to
22 work, for the law to work to protect the communities of
23 Nevada, this language cannot -- you cannot strip the
24 homeowners' rights to foreclose and to bring the highest
25 bid possible.

1 MR. BECKOM: Can you repeat the actual question
2 that I asked him?

3 THE WITNESS: I forgot it too.

4 (Record read by the court reporter as follows:

5 "Q So would you buy a property -- I mean, like
6 would you buy a property at a foreclosure
7 sale if it stated that your lien had
8 been -- the lien had been subordinated?"

9 BY MR. BECKOM:

10 Q Can you please answer my question, sir?

11 A I think your question is confusing. Would I buy
12 it with this language?

13 Q Uh-huh.

14 A Yes, because I know the law trumps this
15 language. I hope that answers your question.

16 Q Even though you testified in your bankruptcy
17 schedules that you thought it was subject to a lien,
18 correct?

19 A I did?

20 Q Anyway, do you know how many HOA foreclosures
21 were going on in January of 2012? Were you going to a
22 lot of them?

23 A I don't recall how many.

24 Q Who is Sin City Realty?

25 A I don't know who they are.

1 Q Who is Matt Mitchell?

2 A Matt Mitchell is the guy that works for Absolute
3 Collection Services I believe. He is the auctioneer.

4 Q He is an auctioneer?

5 A Yes.

6 Q So you know where he works. How do you know
7 where he works?

8 A Well, I've been to Absolute Collection auctions
9 as well.

10 Q Okay. Can you flip over to USB88?

11 A Okay.

12 Q It looks like it says, "Agent for trustee, Matt
13 Mitchell."

14 Was he conducting this sale on the day that you
15 purchased this property?

16 A I don't recall, but I don't believe -- I don't
17 dispute this here.

18 Q Okay. Was he working for Alessi & Koenig at the
19 time of this sale?

20 A Wow, this is -- You're taking this way back. I
21 think at some point Alessi was using Matt Mitchell to
22 hold their sales. You're right.

23 Q Okay. And he was conducting these sales at the
24 Nevada Legal News?

25 A Yes.

1 Q Was he the only auctioneer at the Nevada Legal
2 News? You previously testified that there was sometimes
3 mortgage foreclosures on seconds, on firsts --

4 A Yeah.

5 Q -- HOA foreclosures. Was he crying all those
6 other sales or was he just crying HOA stuff?

7 A No. He was just crying HOA sales.

8 Q Okay.

9 A Heather would cry the bank foreclosures.

10 Q Who is Heather?

11 A Heather works for Nevada Legal News. So all the
12 bank foreclosures she would do. And then apparently at
13 that time -- Well, she would do HOA sales as well. It
14 just depends on whoever the agent is that was assigned.

15 Q Understood.

16 A But in this particular instance, it was Matt
17 Mitchell as agent for Alessi, right?

18 Q Okay. Do you only know Mr. Mitchell through
19 foreclosure auctions?

20 A Yes.

21 Q Okay. When was the first time you went to an
22 HOA foreclosure auction?

23 A I can't recall.

24 Q Was it before January of 2012?

25 A As I mentioned earlier, they're clustered. So

1 yeah, it's very possible that I was present during
2 NRS 107 sales and heard NRS 116 sales.

3 Q Okay. When was the first time you bought a
4 property at a 116 sale?

5 A I don't recall.

6 Q Do you have any recollection of how many bidders
7 there would be on this HOA foreclosure auction?

8 A I do not.

9 Q Do you have any recollection about how many
10 bidders would be bidding on HOA foreclosure auctions
11 generally in January of 2012?

12 A I do not.

13 Q Is it more than five?

14 A I don't -- I don't recall.

15 Q How much money would you bring with you to an
16 HOA foreclosure auction if you were intending to purchase
17 property?

18 A I don't recall.

19 Q Is it more than \$50,000?

20 A I don't recall.

21 Q Did you ever pay more than a hundred thousand
22 dollars for an HOA foreclosure property?

23 MR. BOHN: Is there a time frame or forever?

24 BY MR. BECKOM:

25 Q Forever.

1 A Yes.

2 Q Okay. Let's talk about the entity that
3 conducted the sale. Are you familiar with Alessi &
4 Koenig?

5 A Yes.

6 Q How are you familiar with Alessi & Koenig?

7 A They're a HOA trustee.

8 Q Okay. Is that the only way you are familiar
9 with them?

10 A Yes.

11 Q Are you involved in any litigation with Alessi &
12 Koenig?

13 A Did I what, now?

14 Q Are you involved in any litigation with Alessi &
15 Koenig?

16 A Yes.

17 Q What is the nature of that litigation?

18 A I don't know. My attorney would have to give
19 more.

20 Q Have you ever sued Alessi & Koenig?

21 A Yes.

22 Q For what?

23 A Failure to provide a deed.

24 Q Why did they not provide a deed?

25 A I don't have the specific facts on me.

1 Q Is the only time you ever sued them was for
2 failure to provide a deed?

3 A I don't recall. You have to ask my attorney.

4 Q Okay.

5 A We have a few files.

6 Q So I've been told.

7 And would the sale take place in -- The sale of
8 the 4254 Rollingstone Drive property, did it take place
9 outside or in the lobby?

10 A You mean the physical location?

11 Q Uh-huh.

12 A I don't recall. Five years ago, I don't recall.

13 Q To your recollection about how many people were
14 present at this auction?

15 A No idea.

16 Q Do you know someone who would?

17 A Do I know someone who would?

18 Q Uh-huh.

19 A Matt Mitchell, the auctioneer.

20 Q Okay.

21 A You can ask him.

22 Q Do you have any reason to believe -- Actually
23 strike that.

24 And how many HOA properties have you purchased?

25 A I don't have that information on me.

1 Q How many HOA properties have you lost in court
2 action?

3 A Have I lost?

4 Q Uh-huh.

5 A Zero.

6 Q You have lost zero properties?

7 A Yes.

8 Q Okay.

9 A Knock on wood.

10 Q Did you talk to anyone about purchasing
11 homeowners association properties prior to January of
12 2012?

13 A I can't recall.

14 Q What made you want to start buying HOA
15 foreclosure properties?

16 A I don't recall.

17 Q So you just --- All you know is one day you just
18 decided to start buying HOA foreclosure properties and
19 never looked back?

20 A I mean, I didn't just one day decide to show up
21 to the auction. I was already at the auction.

22 Q So you discussed --- You did not discuss
23 purchasing homeowners association foreclosure property
24 with anyone prior to the first time you purchased it?

25 A I don't recall.

1 Q Did you read through the statute before you
2 purchased it?

3 A I'm sure, but I don't recall.

4 Q Is there someone that could help you remember?

5 A No.

6 Q Did you ever talk about HOA foreclosure
7 properties with anyone but an attorney?

8 A No.

9 Q Did you ever talk about it with David Alessi?

10 A No.

11 Q So you never talked about HOA foreclosure
12 auctions at all with David Alessi?

13 A Ryan Kerbow was my attorney at the time. Ryan
14 Kerbow worked for Alessi & Koenig.

15 Q Your attorney -- Your personal attorney worked
16 for Alessi & Koenig?

17 A My attorney doing quiet titles at the time was
18 Ryan Kerbow.

19 Q When was the first time you filed a quiet title?

20 A I don't recall. You would have to go back in
21 the record.

22 Q So the attorney that was filing quiet titles for
23 you ultimately went and worked for Alessi & Koenig?

24 A Yeah. I mean, I would buy a property from
25 Alessi and I would say I need a quiet title to get title

1 insurance. And then they're lawyers, so they would
2 conveniently do it, for a small fee.

3 Q You retained Alessi & Koenig in 2012 to
4 prosecute quiet title actions for you?

5 A Yes. There was nothing wrong with it. I don't
6 know when. I don't know when the date was. But I
7 retained Ryan Kerbow, who was with Alessi & Koenig.

8 Q Okay. So Alessi & Koenig was both a foreclosure
9 trustee on this property as well as your -- one of their
10 attorneys was your lawyer?

11 A Again, I don't have the date scheme. If I
12 retained Ryan Kerbow before or after, I don't recall.
13 It's been a long time.

14 Q And why --- To the extent you're able to speak on
15 it, is there any reason why you are no longer affiliated
16 with Mr. Kerbow? Are you still affiliated with Mr.
17 Kerbow?

18 A No.

19 Q Okay. So then it would seem like you would have
20 had quite a few discussions with attorneys at Alessi &
21 Koenig concerning HOA foreclosure properties.

22 A With Mr. Ryan Kerbow.

23 Q Do you know where I can find Mr. Ryan Kerbow?

24 A I don't.

25 MR. BOHN: He is still in town.

1 BY MR. BECKOM:

2 Q Had you retained Mr. Kerbow to prosecute your
3 quiet titles as of January of 2012?

4 A I don't recall when I retained Mr. Ryan Kerbow.

5 Q Do you have any recollection about when you
6 stopped using Mr. Kerbow?

7 A I don't recall that either.

8 Q Okay. Are you one of those one dollar guys? By
9 one dollar guys, do you ever go to the foreclosure
10 auctions and there's one guy that bids like \$4,000 and
11 another one that bids like \$4,001?

12 A Am I one of those guys?

13 Q Yes. There's always one of them at every
14 auction I've been to.

15 A I don't think -- I don't know. I mean, have I
16 ever done that? Probably.

17 Q It does seem like it would be kind of fun.

18 A Yeah. It's actually annoying, you know.

19 Q That's what I've been told. They start bidding
20 fractional pennies.

21 A Yeah, exactly. It is annoying.

22 Q So when you're bidding against somebody in
23 January of 2012, are you bidding up only a dollar?

24 A I don't recall. How much was paid for this one?

25 Q Five thousand some odd dollars, \$5,300.

1 A The very first bid, you bid, you know, a dollar
2 more.

3 Q Okay.

4 A And then if somebody jumps in, you bid
5 accordingly.

6 Q Was this a dollar more than the opening bid?

7 A Let's see here. According to this the amount of
8 unpaid debt was \$5,331. The amount paid by the grantee
9 at the trustee's sale was \$5,331.

10 Q How were you able -- Did you just pay off the
11 debt?

12 A I don't understand the question.

13 Q Well, you said the amount of the unpaid debt was
14 \$5,331, correct?

15 A Yes.

16 Q And you paid \$5,331, correct?

17 A You know, I don't know what -- Yes. Correct.

18 Q So there would have been no bidders at this
19 sale?

20 A Yes. Well, nobody placed a bid.

21 Q Except for you.

22 A Apparently so, yeah.

23 Q This is your property, correct?

24 A Yes.

25 Q Okay. It looks like -- Here's an interesting

1 thing. This Trustee's Deed is actually executed by Ryan
2 Kerbow. Was this the deed that was given to you by
3 Alessi & Koenig?

4 A Yes.

5 Q And this is the same Ryan Kerbow that you
6 retained as your lawyer?

7 A At some point. I don't know what year I
8 retained Ryan Kerbow and I don't know what year I no
9 longer had Ryan Kerbow doing work for me.

10 Q I understand. On the second page on the
11 Declaration of Value, is that Mr. Kerbow's signature
12 again there next to grantor?

13 A Is that what it says? I guess. I'm not sure.

14 Q Do you file these deeds or does Alessi & Koenig
15 file these deeds for you?

16 A This one here looks like it's been filed by
17 Alessi & Koenig.

18 Q Okay. Do you pay the transfer tax?

19 A According to this deed, it looks like Alessi &
20 Koenig paid the transfer tax.

21 Q Okay. Let's go back to USB84. This is a Notice
22 of Trustee's Sale. Is this the Notice of Trustee's Sale
23 that you would have I guess reviewed prior to purchasing
24 this property?

25 A I don't see a recording stamp on it.

1 Q And this appears to be signed by Ryan Kerbow on
2 behalf of Glenview West Townhomes Association.

3 A I don't know. I don't recall. I mean, I don't
4 recognize this document.

5 Q Is this the same Ryan Kerbow that you said did
6 legal work for you?

7 A I don't know. Is there another Ryan Kerbow in
8 town?

9 Q I'm asking you.

10 A I'm not sure.

11 Q It appears that he also represents the HOA. Are
12 you aware that Mr. Kerbow was representing both the HOA
13 and you?

14 A No. Again, I'm not saying he was representing
15 me here. I'm not sure at what point he was representing
16 me.

17 Q I understand.

18 Is there anything else you would like to add to
19 your deposition testimony today?

20 A No. There's nothing else.

21 Q Is the property currently leased?

22 A I don't have that record on me.

23 Q Is the property currently maintained in good
24 condition?

25 A All properties, yes.

1 Q Have you transferred the property to any
2 entities since the start of this litigation other than
3 entities you control?

4 A No.

5 Q Okay. So you are still in control of the
6 property at 4254 Rollingstone Drive?

7 A Yes.

8 Q Okay. And you have no reason to believe there
9 is anything wrong with that property at this time?

10 A That is correct.

11 MR. BECKOM: Okay. Are you going to ask him
12 anything or you can just ask him questions whenever you
13 feel like it?

14 MR. BOHN: (Shaking head.)

15 MR. BECKOM: All right. I have nothing further
16 then.

17 (Concluded at 2:22 p.m.)

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

STATE OF NEVADA }
 } ss.
COUNTY OF CLARK }

I, Joanne C. Williams, CCR No. 899, certify as follows:

That I reported the taking of the deposition of the witness, EDDIE HADDAD, at the time and place aforesaid.

That prior to being examined, the witness was by me duly sworn to testify to the truth, the whole truth and nothing but the truth.

That I thereafter transcribed my stenographic notes into typewriting and that the transcript of said deposition is a complete, true and accurate transcript of said stenographic notes.

That transcript review pursuant to NRCP 30(e) was waived.

I further certify that I am not a relative or employee of any party involved in said action, nor a person financially interested in the action.

Dated at Las Vegas, Nevada, this 30th day of October, 2016.

Joanne C. Williams, RPR, CR, CCR No. 899

EXHIBIT 15

B6 Summary (Official Form 6 - Summary) (12/07)

United States Bankruptcy Court
District of Nevada

In re Bourne Valley Court Trust

Debtor

Case No. 12-16387Chapter 11

SUMMARY OF SCHEDULES

Indicate as to each schedule whether that schedule is attached and state the number of pages in each. Report the totals from Schedules A, B, D, E, F, I, and J in the boxes provided. Add the amounts from Schedules A and B to determine the total amount of the debtor's assets. Add the amounts of all claims from Schedules D, E, and F to determine the total amount of the debtor's liabilities. Individual debtors must also complete the "Statistical Summary of Certain Liabilities and Related Data" if they file a case under chapter 7, 11, or 13.

NAME OF SCHEDULE	ATTACHED (YES/NO)	NO. OF SHEETS	ASSETS	LIABILITIES	OTHER
A - Real Property	Yes	1	828,000.00		
B - Personal Property	Yes	3	0.00		
C - Property Claimed as Exempt	No	0			
D - Creditors Holding Secured Claims	Yes	3		0.00	
E - Creditors Holding Unsecured Priority Claims (Total of Claims on Schedule E)	Yes	1		0.00	
F - Creditors Holding Unsecured Nonpriority Claims	Yes	6		0.00	
G - Executory Contracts and Unexpired Leases	Yes	1			
H - Codebtors	Yes	1			
I - Current Income of Individual Debtor(s)	No	0			N/A
J - Current Expenditures of Individual Debtor(s)	No	0			N/A
Total Number of Sheets of ALL Schedules		16			
Total Assets			828,000.00		
Total Liabilities				0.00	

Form 6 - Statistical Summary (12/07)

United States Bankruptcy Court
District of Nevada

In re Bourne Valley Court Trust

Debtor

Case No. 12-16387Chapter 11

STATISTICAL SUMMARY OF CERTAIN LIABILITIES AND RELATED DATA (28 U.S.C. § 159)

If you are an individual debtor whose debts are primarily consumer debts, as defined in § 101(8) of the Bankruptcy Code (11 U.S.C. § 101(8)), filing a case under chapter 7, 11 or 13, you must report all information requested below.

☐ Check this box if you are an individual debtor whose debts are NOT primarily consumer debts. You are not required to report any information here.

This information is for statistical purposes only under 28 U.S.C. § 159.

Summarize the following types of liabilities, as reported in the Schedules, and total them.

Type of Liability	Amount
Domestic Support Obligations (from Schedule E)	
Taxes and Certain Other Debts Owed to Governmental Units (from Schedule E)	
Claims for Death or Personal Injury While Debtor Was Intoxicated (from Schedule E) (whether disputed or undisputed)	
Student Loan Obligations (from Schedule F)	
Domestic Support, Separation Agreement, and Divorce Decree Obligations Not Reported on Schedule E	
Obligations to Pension or Profit-Sharing, and Other Similar Obligations (from Schedule F)	
TOTAL	

State the following:

Average Income (from Schedule I, Line 16)	
Average Expenses (from Schedule J, Line 18)	
Current Monthly Income (from Form 22A Line 12; OR, Form 22B Line 11; OR, Form 22C Line 20)	

State the following:

1. Total from Schedule D, "UNSECURED PORTION, IF ANY" column		
2. Total from Schedule E, "AMOUNT ENTITLED TO PRIORITY" column		
3. Total from Schedule E, "AMOUNT NOT ENTITLED TO PRIORITY, IF ANY" column		
4. Total from Schedule F		
5. Total of non-priority unsecured debt (sum of 1, 3, and 4)		

B6A (Official Form 6A) (12/07)

In re Bourne Valley Court TrustCase No. 12-16387

Debtor

SCHEDULE A - REAL PROPERTY

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a cotenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim." If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

Description and Location of Property	Nature of Debtor's Interest in Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption	Amount of Secured Claim
3171 Castle Canyon Henderson NV 89052 APN: 17735816027		*	135,000.00	Unknown
5332 La Quinta Hills St North Las Vegas, NV 89081 APN: 12435215124		*	85,000.00	Unknown
8129 Back Packer Court Las Vegas NV 89131 APN: 12516316038		*	75,000.00	Unknown
410 Horse Pointe Ave North Las Vegas, NV 89084 APN: 12422311021		*	70,000.00	Unknown
1452 Bourne Valley Court Las Vegas, NV 89123 APN: 17714214043		*	125,000.00	Unknown
3621 Wild Willow St Las Vegas NV 89129 APN: 13836803015		*	35,000.00	Unknown
4254 Rollingstone Dr Las Vegas, NV 89103 APN: 16324111021		*	35,000.00	Unknown
4449 Laguna Garden Ave North Las Vegas NV 89115 APN: 12329210148		*	80,000.00	Unknown
5650 E Sahara Ave #1011 Las Vegas, NV 89142 APN: 16104816019		*	28,000.00	Unknown
5733 Larkdale St Las Vegas, NV 89120 APN: 16131513015		*	160,000.00	Unknown
Sub-Total >			828,000.00	(Total of this page)
Total >			828,000.00	

0 continuation sheets attached to the Schedule of Real Property

(Report also on Summary of Schedules)

B6B (Official Form 6B) (12/07)

In re Bourne Valley Court TrustCase No. 12-16387

Debtor

SCHEDULE B - PERSONAL PROPERTY

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "X" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property."

If the property is being held for a minor child, simply state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

Type of Property	N O N E	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
1. Cash on hand	X			
2. Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.	X			
3. Security deposits with public utilities, telephone companies, landlords, and others.	X			
4. Household goods and furnishings, including audio, video, and computer equipment.	X			
5. Books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles.	X			
6. Wearing apparel.	X			
7. Furs and jewelry.	X			
8. Firearms and sports, photographic, and other hobby equipment.	X			
9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.	X			
10. Annuities. Itemize and name each issuer.	X			

Sub-Total > 0.00
(Total of this page)

2 continuation sheets attached to the Schedule of Personal Property

B6B (Official Form 6B) (12/07) - Cont.

In re Bourne Valley Court TrustCase No. 12-16387

Debtor

SCHEDULE B - PERSONAL PROPERTY
(Continuation Sheet)

Type of Property	N O N E	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
11. Interests in an education IRA as defined in 26 U.S.C. § 530(b)(1) or under a qualified State tuition plan as defined in 26 U.S.C. § 529(b)(1). Give particulars. (File separately the record(s) of any such interest(s). 11 U.S.C. § 521(c).)	X			
12. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Give particulars.	X			
13. Stock and interests in incorporated and unincorporated businesses. Itemize.	X			
14. Interests in partnerships or joint ventures. Itemize.	X			
15. Government and corporate bonds and other negotiable and nonnegotiable instruments.	X			
16. Accounts receivable.	X			
17. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.	X			
18. Other liquidated debts owed to debtor including tax refunds. Give particulars.	X			
19. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule A - Real Property.	X			
20. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.	X			
21. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.	X			

Sub-Total > **0.00**
(Total of this page)

Sheet 1 of 2 continuation sheets attached
to the Schedule of Personal Property

B6B (Official Form 6B) (12/07) - Cont.

In re Bourne Valley Court TrustCase No. 12-16387

Debtor

SCHEDULE B - PERSONAL PROPERTY
(Continuation Sheet)

Type of Property	N O N E	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
22. Patents, copyrights, and other intellectual property. Give particulars.	X			
23. Licenses, franchises, and other general intangibles. Give particulars.	X			
24. Customer lists or other compilations containing personally identifiable information (as defined in 11 U.S.C. § 101(41A)) provided to the debtor by individuals in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes.	X			
25. Automobiles, trucks, trailers, and other vehicles and accessories.	X			
26. Boats, motors, and accessories.	X			
27. Aircraft and accessories.	X			
28. Office equipment, furnishings, and supplies.	X			
29. Machinery, fixtures, equipment, and supplies used in business.	X			
30. Inventory.	X			
31. Animals.	X			
32. Crops - growing or harvested. Give particulars.	X			
33. Farming equipment and implements.	X			
34. Farm supplies, chemicals, and feed.	X			
35. Other personal property of any kind not already listed. Itemize.	X			

Sub-Total > 0.00
 (Total of this page)
 Total > 0.00

Sheet 2 of 2 continuation sheets attached
 to the Schedule of Personal Property

(Report also on Summary of Schedules)

B6D (Official Form 6D) (12/07)

In re **Bourne Valley Court Trust**Case No. **12-16387**

Debtor

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number of all entities holding claims secured by property of the debtor as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests.

List creditors in alphabetical order to the extent practicable. If a minor child is a creditor, the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m). If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor." Include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Total the columns labeled "Amount of Claim Without Deducting Value of Collateral" and "Unsecured Portion, if Any" in the boxes labeled "Total(s)" on the last sheet of the completed schedule. Report the total from the column labeled "Amount of Claim" also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report the total from the column labeled "Unsecured Portion" on the Statistical Summary of Certain Liabilities and Related Data.

☐ Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR H W J C	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
Account No. American Home Mtg Srv PO Box 631730 Irving, TX 75063	-	First Mortgage 5733 Larkdale St Las Vegas, NV 89120 APN: 16131513015			X	Unknown	Unknown
		Value \$ 160,000.00					
Account No. Century 21 Mortgage 2001 Bishops Gate Blvd Mount Laurel, NJ 08054	-	First Mortgage 3171 Castle Canyon Henderson NV 89052 APN: 17735816027			X	Unknown	Unknown
		Value \$ 135,000.00					
Account No. Countrywide 450 American St #SV416 Simi Valley, CA 93065	-	First Mortgage 5650 E Sahara Ave #1011 Las Vegas, NV 89142 APN: 16104816019			X	Unknown	Unknown
		Value \$ 28,000.00					
Account No. Countrywide 450 American St #SV416 Simi Valley, CA 93065	-	First Mortgage 1452 Bourne Valley Court Las Vegas, NV 89123 APN: 17714214043			X	Unknown	Unknown
		Value \$ 125,000.00					
Subtotal (Total of this page)						0.00	0.00

2 continuation sheets attached

B6D (Official Form 6D) (12/07) - Cont.

In re **Bourne Valley Court Trust**Case No. **12-16387**

Debtor

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS
(Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions.)	H W J C	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	C O N T I N G E N T	U N L I Q U I T A T E D	D I S P U T E D	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
Account No.		First Mortgage					
Fidelity National Title Agency 5737 Hedgeford Court Las Vegas, NV 89120	X	3621 Wild Willow St Las Vegas NV 89129 APN: 13836803015			X		
		Value \$ 35,000.00				Unknown	Unknown
Account No.		First Mortgage					
Mountain View Mortgage 7311 W Charleston Blvd #110 Las Vegas, NV 89117	X	4449 Laguna Garden Ave North Las Vegas NV 89115 APN: 12329210148			X		
		Value \$ 80,000.00				Unknown	Unknown
Account No.		First Mortgage					
Mountain View Mortgage 7311 W Charleston Blvd #110 Las Vegas, NV 89117	X	8129 Back Packer Court Las Vegas NV 89131 APN: 12516316038			X		
		Value \$ 75,000.00				Unknown	Unknown
Account No.		First Mortgage					
Plaza Home Mortgage 5090 Shoreham Place #109 San Diego, CA 92122	X	410 Horse Pointe Ave North Las Vegas, NV 89084 APN: 12422311021			X		
		Value \$ 70,000.00				Unknown	Unknown
Account No.		First Mortgage					
Southwest Financial Services 537 E Pete Rose Way #300 Cincinnati, OH 45202	X	4254 Rollingstone Dr Las Vegas, NV 89103 APN: 16324111021			X		
		Value \$ 35,000.00				Unknown	Unknown
Sheet <u>1</u> of <u>2</u> continuation sheets attached to Schedule of Creditors Holding Secured Claims						Subtotal (Total of this page)	0.00
							0.00

B6D (Official Form 6D) (12/07) - Cont.

In re Bourne Valley Court TrustCase No. 12-16387

Debtor

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS (Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions.)	C O D E D E B T O R	H U S B A N D W I F E J O I N T O R C O M M U N I T Y	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	C O N T I N G E N T	U N L I Q U I T A T E D	D I S P U T E D	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY	
Account No.			First Mortgage						
World Savings & Loan Attn: Bankruptcy 4101 Wiseman Blvd San Antonio, TX 78251			5332 La Quinta Hills St North Las Vegas, NV 89081 APN: 12435215124			X			
			Value \$ 85,000.00				Unknown	Unknown	
Account No.									
			Value \$						
Account No.									
			Value \$						
Account No.									
			Value \$						
Account No.									
			Value \$						
Sheet <u>2</u> of <u>2</u> continuation sheets attached to Schedule of Creditors Holding Secured Claims							Subtotal (Total of this page)	0.00	0.00
							Total (Report on Summary of Schedules)	0.00	0.00

B6E (Official Form 6E) (4/10)

In re Bourne Valley Court TrustCase No. 12-16387

Debtor

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

A complete list of claims entitled to priority, listed separately by type of priority, is to be set forth on the sheets provided. Only holders of unsecured claims entitled to priority should be listed in this schedule. In the boxes provided on the attached sheets, state the name, mailing address, including zip code, and last four digits of the account number, if any, of all entities holding priority claims against the debtor or the property of the debtor, as of the date of the filing of the petition. Use a separate continuation sheet for each type of priority and label each with the type of priority.

The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112 and Fed. R. Bankr. P. 1007(m).

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H-Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of claims listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all claims listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

Report the total of amounts entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts report this total also on the Statistical Summary of Certain Liabilities and Related Data.

Report the total of amounts not entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts not entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts report this total also on the Statistical Summary of Certain Liabilities and Related Data.

☒ Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

TYPES OF PRIORITY CLAIMS (Check the appropriate box(es) below if claims in that category are listed on the attached sheets)

☐ **Domestic support obligations**

Claims for domestic support that are owed to or recoverable by a spouse, former spouse, or child of the debtor, or the parent, legal guardian, or responsible relative of such a child, or a governmental unit to whom such a domestic support claim has been assigned to the extent provided in 11 U.S.C. § 507(a)(1).

☐ **Extensions of credit in an involuntary case**

Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. § 507(a)(3).

☐ **Wages, salaries, and commissions**

Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees and commissions owing to qualifying independent sales representatives up to \$11,725* per person earned within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4).

☐ **Contributions to employee benefit plans**

Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(5).

☐ **Certain farmers and fishermen**

Claims of certain farmers and fishermen, up to \$5,775* per farmer or fisherman, against the debtor, as provided in 11 U.S.C. § 507(a)(6).

☐ **Deposits by individuals**

Claims of individuals up to \$2,600* for deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. § 507(a)(7).

☐ **Taxes and certain other debts owed to governmental units**

Taxes, customs duties, and penalties owing to federal, state, and local governmental units as set forth in 11 U.S.C. § 507(a)(8).

☐ **Commitments to maintain the capital of an insured depository institution**

Claims based on commitments to the FDIC, RTC, Director of the Office of Thrift Supervision, Comptroller of the Currency, or Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution. 11 U.S.C. § 507(a)(9).

☐ **Claims for death or personal injury while debtor was intoxicated**

Claims for death or personal injury resulting from the operation of a motor vehicle or vessel while the debtor was intoxicated from using alcohol, a drug, or another substance. 11 U.S.C. § 507(a)(10).

* Amount subject to adjustment on 4/01/13, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

0 continuation sheets attached

B6F (Official Form 6F) (12/07)

In re **Bourne Valley Court Trust**Case No. **12-16387**

Debtor

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m). Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report this total also on the Statistical Summary of Certain Liabilities and Related Data.

☐ Check this box if debtor has no creditors holding unsecured claims to report on this Schedule F.

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E B T O R	H U S B A N D W I F E J O I N T C O M M U N I T Y	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM
Account No. Alessi & Koenig LLC 9500 W Flamingo #205 Las Vegas, NV 89147	-	-	Unpaid Lien 3621 Wild Willow			X	Unknown
Account No. Alessi & Koenig LLC 9500 W Flamingo #205 Las Vegas, NV 89147	-	-	Unpaid HOA 4254 Rollingstone Dr			X	Unknown
Account No. Angius & Terry Collections 1120 N Town Center Dr #260 Las Vegas, NV 89144	-	-	Unpaid HOA Lien 8129 Back Packer			X	Unknown
Account No. Angius & Terry Collections 1120 N Town Center Dr #260 Las Vegas, NV 89144	-	-	Unpaid HOA Lien 1452 Bourne Valley			X	Unknown
Subtotal (Total of this page)							0.00

5 continuation sheets attached

B6F (Official Form 6F) (12/07) - Cont.

In re **Bourne Valley Court Trust**Case No. **12-16387**

Debtor

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS (Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E D E B T O R	H U S B A N D W I F E J O I N T O R	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	C O N T I N G E N T	U N L I Q U I T E D	D I S P U T E D	AMOUNT OF CLAIM
Account No. Angius & Terry Collections 1120 N Town Center Dr #260 Las Vegas, NV 89144		-	Unpaid HOA Lien 5733 Larkdale			X	Unknown
Account No. BAC Home Loans Servicing 450 American St. Simi Valley, CA 93065		-	5650 E Sahara Ave #1011 Lien			X	Unknown
Account No. Chase 2780 Lake Vista Dr Lewisville, TX 75067		-	Unpaid Lien 5733 Larkdale			X	Unknown
Account No. City of Henderson PO Box 52767 Phoenix, AZ 85072		-	Unpaid Utilities 3171 Castle Canyon			X	Unknown
Account No. City of North Las Vegas 2200 Civic Center Dr North Las Vegas, NV 89030		-	Unpaid Utilities 5332 La Quinta			X	Unknown
Sheet no. <u>1</u> of <u>5</u> sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims							Subtotal (Total of this page) 0.00

B6F (Official Form 6F) (12/07) - Cont.

In re **Bourne Valley Court Trust**Case No. **12-16387**

Debtor

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS (Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E S H W I C	Husband, Wife, Joint, or Community	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM	
Account No. City of North Las Vegas 2200 Civic Center Dr North Las Vegas, NV 89030			Unpaid Utility Service 410 Horse Pointe			X	Unknown	
Account No. City of North Las Vegas 2200 Civic Center Dr North Las Vegas, NV 89030			Unpaid Utility Service 4449 Laguna Garden			X	Unknown	
Account No. Cortez Heights HOA PO Box 12117 Las Vegas, NV 89112			Unpaid HOA Lien 5332 La Quinta			X	Unknown	
Account No. Dotson & Qualey 2320 Paseo Dr Prado #B205 Las Vegas, NV 89102			Judgement Lien 5650 E Sahara Ave #1101			X	Unknown	
Account No. EMC Mortgage Corp 2780 Lake Vista Dr Lewisville, TX 75067			8129 Back Packer Lien			X	Unknown	
Sheet no. <u>2</u> of <u>5</u> sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims							Subtotal (Total of this page)	0.00

B6F (Official Form 6F) (12/07) - Cont.

In re **Bourne Valley Court Trust**Case No. **12-16387**

Debtor

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E D E B T O R	H U S B A N D , W I F E , J O I N T , O R C O M M U N I T Y	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM	
Account No. Hidden Crest Park Hurst HOA PO Box 12117 Las Vegas, NV 89112			Unpaid HOA Lien 1452 Bourne Valley			X	Unknown	
Account No. Law Offices of Les Zieve 18377 Beach Blvd #210 Huntington Beach, CA 92648			Unpaid Lien 4254 Rollingstone Dr			X	Unknown	
Account No. Leach Johnson Song & Gruchow 5495 S. Rainbow Blvd #202 Las Vegas, NV 89118			HOA Lien 3171 Castle Canyon			X	Unknown	
Account No. Nevada Association Services TS #N67297 6224 W Desert Inn Rd #A Las Vegas, NV 89146			Unpaid HOA Lien 5650 E Sahara Ave #1101			X	Unknown	
Account No. Quality Loan Service Corp 2141 5th Ave San Diego, CA 92101			Unpaid Lien 5733 Larkdale			X	Unknown	
Sheet no. <u>3</u> of <u>5</u> sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims							Subtotal (Total of this page)	0.00

B6F (Official Form 6F) (12/07) - Cont.

In re **Bourne Valley Court Trust**Case No. **12-16387**

Debtor

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS (Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E D E B T O R	H W J C	Husband, Wife, Joint, or Community DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM
Account No. Republic Services 7 E. Sahara Ave Las Vegas, NV 89104		-	Unpaid Utility Service 1452 Bourne Valley			X	Unknown
Account No. Republic Services 7 E. Sahara Ave Las Vegas, NV 89104		-	Unpaid Utility Service 3621 Wild Willow			X	Unknown
Account No. Taylor Association Management 259 N Pecos Rd #100 Henderson, NV 89074		-	Unpaid HOA Lien 4449 Laguna Garden			X	Unknown
Account No. The Parks HOA 2300 W Sahara Ave #1130 Box 33 Las Vegas, NV 89102		-	Unpaid HOA Lien 410 Horse Pointe			X	Unknown
Account No. Trustee Corps 17100 Gillette Ave Irvine, CA 92614		-	Unpaid Lien 410 Horse Pointe			X	Unknown
Sheet no. 4 of 5 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims			Subtotal (Total of this page)			0.00	

B6F (Official Form 6F) (12/07) - Cont.

In re Bourne Valley Court TrustCase No. 12-16387

Debtor

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS (Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E S T O R	H U S B A N D W I F E J O I N T C O M M U N I T Y	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM
Account No. US Bank C/O First American Trustee Serv 6 Campus Circle 2nd Floor Roanoke, TX 76262		-	Unpaid Lien 3621 Wild Willow			X	Unknown
Account No.							
Account No.							
Account No.							
Account No.							
Sheet no. <u>5</u> of <u>5</u> sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims	Subtotal (Total of this page)						0.00
Total (Report on Summary of Schedules)						0.00	

B6G (Official Form 6G) (12/07)

In re Bourne Valley Court TrustCase No. 12-16387

Debtor

SCHEDULE G - EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests. State nature of debtor's interest in contract, i.e., "Purchaser", "Agent", etc. State whether debtor is the lessor or lessee of a lease. Provide the names and complete mailing addresses of all other parties to each lease or contract described. If a minor child is a party to one of the leases or contracts, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

☐ Check this box if debtor has no executory contracts or unexpired leases.

Name and Mailing Address, Including Zip Code, of Other Parties to Lease or Contract	Description of Contract or Lease and Nature of Debtor's Interest. State whether lease is for nonresidential real property. State contract number of any government contract.
Great Bridge Properties 900 S Las Vegas Blvd #810 Las Vegas, NV 89101	Property Management Agreement for 3171 Castle Canyon
Great Bridge Properties 900 S Las Vegas Blvd #810 Las Vegas, NV 89101	Property Management Agreement for 5332 La Quinta Hills
Great Bridge Properties 900 S Las Vegas Blvd #810 Las Vegas, NV 89101	Property Management Agreement for 8129 Back Packer
Great Bridge Properties 900 S Las Vegas Blvd #810 Las Vegas, NV 89101	Property Management Agreement for 410 Horse Pointe
Great Bridge Properties 900 S Las Vegas Blvd #810 Las Vegas, NV 89101	Property Management Agreement for 1452 Bourne Valley
Great Bridge Properties 900 S Las Vegas Blvd #810 Las Vegas, NV 89101	Property Management Agreement for 3621 Wild Willow
Great Bridge Properties 900 S Las Vegas Blvd #810 Las Vegas, NV 89101	Property Management Agreement for 4254 Rollingstone Dr
Great Bridge Properties 900 S Las Vegas Blvd #810 Las Vegas, NV 89101	Property Management Agreement for 4449 Laguna Garden
Great Bridge Properties 900 S Las Vegas Blvd #810 Las Vegas, NV 89101	Property Management Agreement for 5650 E Sahara Ave #1101
Great Bridge Properties 900 S Las Vegas Blvd #810 Las Vegas, NV 89101	Property Management Agreement for 5733 Larkdale

0

continuation sheets attached to Schedule of Executory Contracts and Unexpired Leases

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Best Case Bankruptcy

APP001001

B6H (Official Form 6H) (12/07)

In re Bourne Valley Court TrustCase No. 12-16387Debtor**SCHEDULE H - CODEBTORS**

Provide the information requested concerning any person or entity, other than a spouse in a joint case, that is also liable on any debts listed by debtor in the schedules of creditors. Include all guarantors and co-signers. If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within the eight year period immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state, commonwealth, or territory. Include all names used by the nondebtor spouse during the eight years immediately preceding the commencement of this case. If a minor child is a codebtor or a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

☒ Check this box if debtor has no codebtors.

NAME AND ADDRESS OF CODEBTOR

NAME AND ADDRESS OF CREDITOR

0

..... continuation sheets attached to Schedule of Codebtors

B6 Declaration (Official Form 6 - Declaration). (12/07)

**United States Bankruptcy Court
District of Nevada**

In re Bourne Valley Court Trust

Debtor(s)

Case No. 12-16387

Chapter 11

DECLARATION CONCERNING DEBTOR'S SCHEDULES

DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF CORPORATION OR PARTNERSHIP

I, the Registered Agent of the corporation named as debtor in this case, declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of 18 sheets, and that they are true and correct to the best of my knowledge, information, and belief.

Date June 13, 2012

Signature /s/ Eddie Haddad

Eddie Haddad
Registered Agent

*Penalty for making a false statement or concealing property: Fine of up to \$500,000 or imprisonment for up to 5 years or both.
18 U.S.C. §§ 152 and 3571.*

B7 (Official Form 7) (04/10)

**United States Bankruptcy Court
District of Nevada**

In re Bourne Valley Court Trust

Debtor(s)

Case No. 12-16387Chapter 11

STATEMENT OF FINANCIAL AFFAIRS

This statement is to be completed by every debtor. Spouses filing a joint petition may file a single statement on which the information for both spouses is combined. If the case is filed under chapter 12 or chapter 13, a married debtor must furnish information for both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. An individual debtor engaged in business as a sole proprietor, partner, family farmer, or self-employed professional, should provide the information requested on this statement concerning all such activities as well as the individual's personal affairs. To indicate payments, transfers and the like to minor children, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112; Fed. R. Bankr. P. 1007(m).

Questions 1 - 18 are to be completed by all debtors. Debtors that are or have been in business, as defined below, also must complete Questions 19 - 25. If the answer to an applicable question is "None," mark the box labeled "None." If additional space is needed for the answer to any question, use and attach a separate sheet properly identified with the case name, case number (if known), and the number of the question.

DEFINITIONS

"In business." A debtor is "in business" for the purpose of this form if the debtor is a corporation or partnership. An individual debtor is "in business" for the purpose of this form if the debtor is or has been, within six years immediately preceding the filing of this bankruptcy case, any of the following: an officer, director, managing executive, or owner of 5 percent or more of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or self-employed full-time or part-time. An individual debtor also may be "in business" for the purpose of this form if the debtor engages in a trade, business, or other activity, other than as an employee, to supplement income from the debtor's primary employment.

"Insider." The term "insider" includes but is not limited to: relatives of the debtor; general partners of the debtor and their relatives; corporations of which the debtor is an officer, director, or person in control; officers, directors, and any owner of 5 percent or more of the voting or equity securities of a corporate debtor and their relatives; affiliates of the debtor and insiders of such affiliates; any managing agent of the debtor. 11 U.S.C. § 101.

1. Income from employment or operation of business

None



State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business, including part-time activities either as an employee or in independent trade or business, from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the two years immediately preceding this calendar year. (A debtor that maintains, or has maintained, financial records on the basis of a fiscal rather than a calendar year may report fiscal year income. Identify the beginning and ending dates of the debtor's fiscal year.) If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income of both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT

SOURCE

2. Income other than from employment or operation of business

None



State the amount of income received by the debtor other than from employment, trade, profession, or operation of the debtor's business during the two years immediately preceding the commencement of this case. Give particulars. If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income for each spouse whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT

SOURCE

3. Payments to creditors

None

Complete a. or b., as appropriate, and c.

a. *Individual or joint debtor(s) with primarily consumer debts.* List all payments on loans, installment purchases of goods or services, and other debts to any creditor made within 90 days immediately preceding the commencement of this case unless the aggregate value of all property that constitutes or is affected by such transfer is less than \$600. Indicate with an (*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and credit counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS
OF CREDITORDATES OF
PAYMENTS

AMOUNT PAID

AMOUNT STILL
OWING

None



b. *Debtor whose debts are not primarily consumer debts:* List each payment or other transfer to any creditor made within 90 days immediately preceding the commencement of the case unless the aggregate value of all property that constitutes or is affected by such transfer is less than \$5,850*. If the debtor is an individual, indicate with an asterisk (*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and credit counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments and other transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR

DATES OF
PAYMENTS/
TRANSFERSAMOUNT
PAID OR
VALUE OF
TRANSFERSAMOUNT STILL
OWING

None



c. *All debtors:* List all payments made within one year immediately preceding the commencement of this case to or for the benefit of creditors who are or were insiders. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR AND
RELATIONSHIP TO DEBTOR

DATE OF PAYMENT

AMOUNT PAID

AMOUNT STILL
OWING**4. Suits and administrative proceedings, executions, garnishments and attachments**

None



a. List all suits and administrative proceedings to which the debtor is or was a party within one year immediately preceding the filing of this bankruptcy case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

CAPTION OF SUIT
AND CASE NUMBERNATURE OF
PROCEEDINGCOURT OR AGENCY
AND LOCATIONSTATUS OR
DISPOSITION

None



b. Describe all property that has been attached, garnished or seized under any legal or equitable process within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON FOR WHOSE
BENEFIT PROPERTY WAS SEIZED

DATE OF SEIZURE

DESCRIPTION AND VALUE OF
PROPERTY**5. Repossessions, foreclosures and returns**

None



List all property that has been repossessed by a creditor, sold at a foreclosure sale, transferred through a deed in lieu of foreclosure or returned to the seller, within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF
CREDITOR OR SELLERDATE OF REPOSSESSION,
FORECLOSURE SALE,
TRANSFER OR RETURNDESCRIPTION AND VALUE OF
PROPERTY

* Amount subject to adjustment on 4/01/13, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

6. Assignments and receiverships

- None ☒ a. Describe any assignment of property for the benefit of creditors made within 120 days immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include any assignment by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF ASSIGNEE	DATE OF ASSIGNMENT	TERMS OF ASSIGNMENT OR SETTLEMENT
------------------------------	--------------------	-----------------------------------

- None ☒ b. List all property which has been in the hands of a custodian, receiver, or court-appointed official within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CUSTODIAN	NAME AND LOCATION OF COURT CASE TITLE & NUMBER	DATE OF ORDER	DESCRIPTION AND VALUE OF PROPERTY
-------------------------------	---	---------------	-----------------------------------

7. Gifts

- None ☒ List all gifts or charitable contributions made within one year immediately preceding the commencement of this case except ordinary and usual gifts to family members aggregating less than \$200 in value per individual family member and charitable contributions aggregating less than \$100 per recipient. (Married debtors filing under chapter 12 or chapter 13 must include gifts or contributions by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON OR ORGANIZATION	RELATIONSHIP TO DEBTOR, IF ANY	DATE OF GIFT	DESCRIPTION AND VALUE OF GIFT
--	--------------------------------	--------------	-------------------------------

8. Losses

- None ☒ List all losses from fire, theft, other casualty or gambling within one year immediately preceding the commencement of this case or since the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include losses by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

DESCRIPTION AND VALUE OF PROPERTY	DESCRIPTION OF CIRCUMSTANCES AND, IF LOSS WAS COVERED IN WHOLE OR IN PART BY INSURANCE, GIVE PARTICULARS	DATE OF LOSS
-----------------------------------	--	--------------

9. Payments related to debt counseling or bankruptcy

- None ☐ List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of the petition in bankruptcy within one year immediately preceding the commencement of this case.

NAME AND ADDRESS OF PAYEE	DATE OF PAYMENT, NAME OF PAYOR IF OTHER THAN DEBTOR	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
The Firm, PC 200 E Charleston Blvd Las Vegas, NV 89104	5/30/12	\$6000.00

10. Other transfers

- None ☒ a. List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within two years immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF TRANSFEREE, RELATIONSHIP TO DEBTOR	DATE	DESCRIBE PROPERTY TRANSFERRED AND VALUE RECEIVED
--	------	--

- None ☒ b. List all property transferred by the debtor within ten years immediately preceding the commencement of this case to a self-settled trust or similar device of which the debtor is a beneficiary.

NAME OF TRUST OR OTHER DEVICE	DATE(S) OF TRANSFER(S)	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY OR DEBTOR'S INTEREST IN PROPERTY
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11. Closed financial accounts

- None ☒ List all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within one year immediately preceding the commencement of this case. Include checking, savings, or other financial accounts, certificates of deposit, or other instruments; shares and share accounts held in banks, credit unions, pension funds, cooperatives, associations, brokerage houses and other financial institutions. (Married debtors filing under chapter 12 or chapter 13 must include information concerning accounts or instruments held by or for either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF INSTITUTION	TYPE OF ACCOUNT, LAST FOUR DIGITS OF ACCOUNT NUMBER, AND AMOUNT OF FINAL BALANCE	AMOUNT AND DATE OF SALE OR CLOSING
---------------------------------	--	------------------------------------

12. Safe deposit boxes

- None ☒ List each safe deposit or other box or depository in which the debtor has or had securities, cash, or other valuables within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include boxes or depositories of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF BANK OR OTHER DEPOSITORY	NAMES AND ADDRESSES OF THOSE WITH ACCESS TO BOX OR DEPOSITORY	DESCRIPTION OF CONTENTS	DATE OF TRANSFER OR SURRENDER, IF ANY
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13. Setoffs

- None ☒ List all setoffs made by any creditor, including a bank, against a debt or deposit of the debtor within 90 days preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATE OF SETOFF	AMOUNT OF SETOFF
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14. Property held for another person

- None ☒ List all property owned by another person that the debtor holds or controls.

NAME AND ADDRESS OF OWNER	DESCRIPTION AND VALUE OF PROPERTY	LOCATION OF PROPERTY
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15. Prior address of debtor

- None ☒ If the debtor has moved within three years immediately preceding the commencement of this case, list all premises which the debtor occupied during that period and vacated prior to the commencement of this case. If a joint petition is filed, report also any separate address of either spouse.

ADDRESS	NAME USED	DATES OF OCCUPANCY
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16. Spouses and Former Spouses

- None ☒ If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within eight years immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state.

NAME

17. Environmental Information.

For the purpose of this question, the following definitions apply:

"Environmental Law" means any federal, state, or local statute or regulation regulating pollution, contamination, releases of hazardous or toxic substances, wastes or material into the air, land, soil, surface water, groundwater, or other medium, including, but not limited to, statutes or regulations regulating the cleanup of these substances, wastes, or material.

"Site" means any location, facility, or property as defined under any Environmental Law, whether or not presently or formerly owned or operated by the debtor, including, but not limited to, disposal sites.

"Hazardous Material" means anything defined as a hazardous waste, hazardous substance, toxic substance, hazardous material, pollutant, or contaminant or similar term under an Environmental Law

- None ☒ a. List the name and address of every site for which the debtor has received notice in writing by a governmental unit that it may be liable or potentially liable under or in violation of an Environmental Law. Indicate the governmental unit, the date of the notice, and, if known, the Environmental Law:

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW
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- None ☒ b. List the name and address of every site for which the debtor provided notice to a governmental unit of a release of Hazardous Material. Indicate the governmental unit to which the notice was sent and the date of the notice.

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW
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- None ☒ c. List all judicial or administrative proceedings, including settlements or orders, under any Environmental Law with respect to which the debtor is or was a party. Indicate the name and address of the governmental unit that is or was a party to the proceeding, and the docket number.

NAME AND ADDRESS OF GOVERNMENTAL UNIT	DOCKET NUMBER	STATUS OR DISPOSITION
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18. Nature, location and name of business

- None ☐ a. *If the debtor is an individual*, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partner in a partnership, sole proprietor, or was self-employed in a trade, profession, or other activity either full- or part-time within six years immediately preceding the commencement of this case, or in which the debtor owned 5 percent or more of the voting or equity securities within six years immediately preceding the commencement of this case.

If the debtor is a partnership, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities, within six years immediately preceding the commencement of this case.

If the debtor is a corporation, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities within six years immediately preceding the commencement of this case.

NAME	LAST FOUR DIGITS OF SOCIAL-SECURITY OR OTHER INDIVIDUAL TAXPAYER-I.D. NO. (ITIN)/ COMPLETE EIN	ADDRESS	NATURE OF BUSINESS	BEGINNING AND ENDING DATES
Bourne Valley Court Trust	45-5346162	C/O Resources Group LLC 900 Las Vegas Blvd S. #810 Las Vegas, NV 89107	Real Estate	5/1/2012-Current

- None ☒ b. Identify any business listed in response to subdivision a., above, that is "single asset real estate" as defined in 11 U.S.C. § 101.

NAME

ADDRESS

The following questions are to be completed by every debtor that is a corporation or partnership and by any individual debtor who is or has been, within six years immediately preceding the commencement of this case, any of the following: an officer, director, managing executive, or owner of more than 5 percent of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership, a sole proprietor, or self-employed in a trade, profession, or other activity, either full- or part-time.

(An individual or joint debtor should complete this portion of the statement only if the debtor is or has been in business, as defined above, within six years immediately preceding the commencement of this case. A debtor who has not been in business within those six years should go directly to the signature page.)

19. Books, records and financial statements

- None ☒ a. List all bookkeepers and accountants who within two years immediately preceding the filing of this bankruptcy case kept or supervised the keeping of books of account and records of the debtor.

NAME AND ADDRESS

DATES SERVICES RENDERED

Rosie Bonilla
900 Las Vegas Blvd #810
Las Vegas, NV 89101

1/2012-Current

- None ☒ b. List all firms or individuals who within the two years immediately preceding the filing of this bankruptcy case have audited the books of account and records, or prepared a financial statement of the debtor.

NAME

ADDRESS

DATES SERVICES RENDERED

- None ☒ c. List all firms or individuals who at the time of the commencement of this case were in possession of the books of account and records of the debtor. If any of the books of account and records are not available, explain.

NAME

ADDRESS

- None ☒ d. List all financial institutions, creditors and other parties, including mercantile and trade agencies, to whom a financial statement was issued by the debtor within two years immediately preceding the commencement of this case.

NAME AND ADDRESS

DATE ISSUED

20. Inventories

- None ☒ a. List the dates of the last two inventories taken of your property, the name of the person who supervised the taking of each inventory, and the dollar amount and basis of each inventory.

DATE OF INVENTORY

INVENTORY SUPERVISOR

DOLLAR AMOUNT OF INVENTORY
(Specify cost, market or other basis)

- None ☒ b. List the name and address of the person having possession of the records of each of the two inventories reported in a., above.

DATE OF INVENTORY

NAME AND ADDRESSES OF CUSTODIAN OF INVENTORY
RECORDS

21. Current Partners, Officers, Directors and Shareholders

- None ☒ a. If the debtor is a partnership, list the nature and percentage of partnership interest of each member of the partnership.

NAME AND ADDRESS

NATURE OF INTEREST

PERCENTAGE OF INTEREST

- None ☒ b. If the debtor is a corporation, list all officers and directors of the corporation, and each stockholder who directly or indirectly owns, controls, or holds 5 percent or more of the voting or equity securities of the corporation.

NAME AND ADDRESS	TITLE	NATURE AND PERCENTAGE OF STOCK OWNERSHIP
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22. Former partners, officers, directors and shareholders

- None ☒ a. If the debtor is a partnership, list each member who withdrew from the partnership within one year immediately preceding the commencement of this case.

NAME	ADDRESS	DATE OF WITHDRAWAL
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- None ☒ b. If the debtor is a corporation, list all officers, or directors whose relationship with the corporation terminated within one year immediately preceding the commencement of this case.

NAME AND ADDRESS	TITLE	DATE OF TERMINATION
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23. Withdrawals from a partnership or distributions by a corporation

- None ☒ If the debtor is a partnership or corporation, list all withdrawals or distributions credited or given to an insider, including compensation in any form, bonuses, loans, stock redemptions, options exercised and any other perquisite during one year immediately preceding the commencement of this case.

NAME & ADDRESS OF RECIPIENT, RELATIONSHIP TO DEBTOR	DATE AND PURPOSE OF WITHDRAWAL	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
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24. Tax Consolidation Group.

- None ☒ If the debtor is a corporation, list the name and federal taxpayer identification number of the parent corporation of any consolidated group for tax purposes of which the debtor has been a member at any time within six years immediately preceding the commencement of the case.

NAME OF PARENT CORPORATION	TAXPAYER IDENTIFICATION NUMBER (EIN)
----------------------------	--------------------------------------

25. Pension Funds.

- None ☒ If the debtor is not an individual, list the name and federal taxpayer-identification number of any pension fund to which the debtor, as an employer, has been responsible for contributing at any time within six years immediately preceding the commencement of the case.

NAME OF PENSION FUND	TAXPAYER IDENTIFICATION NUMBER (EIN)
----------------------	--------------------------------------

DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF CORPORATION OR PARTNERSHIP

I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct to the best of my knowledge, information and belief.

Date June 13, 2012

Signature /s/ Eddie Haddad

Eddie Haddad
Registered Agent

[An individual signing on behalf of a partnership or corporation must indicate position or relationship to debtor.]

Penalty for making a false statement: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571

United States Bankruptcy Court
District of Nevada

In re Bourne Valley Court Trust

Debtor(s)

Case No. 12-16387Chapter 11

DISCLOSURE OF COMPENSATION OF ATTORNEY FOR DEBTOR(S)

1. Pursuant to 11 U.S.C. § 329(a) and Bankruptcy Rule 2016(b), I certify that I am the attorney for the above-named debtor and that compensation paid to me within one year before the filing of the petition in bankruptcy, or agreed to be paid to me, for services rendered or to be rendered on behalf of the debtor(s) in contemplation of or in connection with the bankruptcy case is as follows:

For legal services, I have agreed to accept	\$	<u>6,000.00</u>
Prior to the filing of this statement I have received	\$	<u>6,000.00</u>
Balance Due	\$	<u>0.00</u>

2. The source of the compensation paid to me was:

☒ Debtor ☐ Other (specify):

3. The source of compensation to be paid to me is:

☒ Debtor ☐ Other (specify):

4. ☒ I have not agreed to share the above-disclosed compensation with any other person unless they are members and associates of my law firm.

☐ I have agreed to share the above-disclosed compensation with a person or persons who are not members or associates of my law firm. A copy of the agreement, together with a list of the names of the people sharing in the compensation is attached.

5. In return for the above-disclosed fee, I have agreed to render legal service for all aspects of the bankruptcy case, including:

- a. Analysis of the debtor's financial situation, and rendering advice to the debtor in determining whether to file a petition in bankruptcy;
- b. Preparation and filing of any petition, schedules, statement of affairs and plan which may be required;
- c. Representation of the debtor at the meeting of creditors and confirmation hearing, and any adjourned hearings thereof;
- d. [Other provisions as needed]

Negotiations with secured creditors to reduce to market value; exemption planning; preparation and filing of reaffirmation agreements and applications as needed; preparation and filing of motions pursuant to 11 USC 522(f)(2)(A) for avoidance of liens on household goods.

6. By agreement with the debtor(s), the above-disclosed fee does not include the following service:

Representation of the debtors in any dischargeability actions, judicial lien avoidances, relief from stay actions or any other adversary proceeding.

CERTIFICATION

I certify that the foregoing is a complete statement of any agreement or arrangement for payment to me for representation of the debtor(s) in this bankruptcy proceeding.

Dated: June 13, 2012/s/ Ryan Alexander

Ryan Alexander 10845

The Firm, PC

200 E Charleston Blvd

Las Vegas, NV 89104

(702) 222-3476 Fax: (702) 252-3476

ryan@thefirm-lv.com

**United States Bankruptcy Court
District of Nevada**

In re Bourne Valley Court Trust

Debtor

Case No. 12-16387

Chapter 11

LIST OF EQUITY SECURITY HOLDERS

Following is the list of the Debtor's equity security holders which is prepared in accordance with Rule 1007(a)(3) for filing in this chapter 11 case.

Name and last known address or place of business of holder	Security Class	Number of Securities	Kind of Interest
Eddie Haddad C/O Resources Group LLC 900 Las Vegas Blvd S. #810 Las Vegas, NV 89107			Owner

DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF CORPORATION OR PARTNERSHIP

I, the Registered Agent of the corporation named as the debtor in this case, declare under penalty of perjury that I have read the foregoing List of Equity Security Holders and that it is true and correct to the best of my information and belief.

Date June 13, 2012

Signature /s/ Eddie Haddad

**Eddie Haddad
Registered Agent**

*Penalty for making a false statement or concealing property: Fine of up to \$500,000 or imprisonment for up to 5 years or both.
18 U.S.C §§ 152 and 3571.*

0 continuation sheets attached to List of Equity Security Holders

United States Bankruptcy Court
District of Nevada

In re Bourne Valley Court Trust

Debtor(s)

Case No. 12-16387

Chapter 11

VERIFICATION OF CREDITOR MATRIX

I, the Registered Agent of the corporation named as the debtor in this case, hereby verify that the attached list of creditors is true and correct to the best of my knowledge.

Date: June 13, 2012

/s/ Eddie Haddad

Eddie Haddad/Registered Agent
Signer/Title

EXHIBIT 16

In The Matter Of:
*U.S. Bank National Association vs.
George R. Edwards, et al.*

*30(b)(6) David Alessi
November 28, 2016*



Min-U-Script® with Word Index

<p>IN THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA</p> <p>IN AND FOR THE COUNTY OF CLARK</p> <p>U.S. BANK NATIONAL ASSOCIATION, ND, A NATIONAL ASSOCIATION,</p> <p>Plaintiff,</p> <p>vs.) Case No. A-12-667590-C) Dept. No. XVI</p> <p>GEORGE R. EDWARDS, an individual, ANY AND ALL PERSON UNKNOWN, CLAIMING TO BE PERSONAL REPRESENTATIVES OF GEORGE R. EDWARDS ESTATE OR DULY APPOINTED, QUALIFIED, AND ACTING EXECUTOR OF THE WILL OF THE ESTATE OF GEORGE R. EDWARDS; RESOURCES GROUP, LLC, a Nevada Limited-Liability Company; GLENVIEW WEST TOWNHOMES ASSOCIATION, a Nevada non-profit corporation; DOES 4 through 10, inclusive, and DOES 1 through 10, inclusive,</p> <p>Defendants.</p> <p>And all related claims.</p> <p>DEPOSITION OF DAVID ALESSI 30(b)(6) DEPONENT FOR ALESSI & KOENIG, LLC</p> <p>Taken on November 28, 2016 at 1:11 p.m.</p> <p>at 703 South 8th Street Las Vegas, Nevada</p> <p>Reported By: Joanne C. Williams, RPR, CR CCR No. 999</p>	<p>Page 3</p> <p>1 INDEX</p> <p>2 WITNESS PAGE</p> <p>3 DAVID ALESSI</p> <p>4 Examination by Mr. Beckom 4</p> <p>5 Examination by Ms. Mikrut 61</p> <p>6 EXHIBITS</p> <p>7 EXHIBITS PAGE</p> <p>8 1 Affidavit of David Alessi, Esq. as</p> <p>9 Custodian of Records for</p> <p>10 Alessi & Koenig, LLC, copy of file of 6</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>Page 2</p> <p>1 APPEARANCES:</p> <p>2 For Plaintiff:</p> <p>3 McCarthy & Koltus, LLP</p> <p>4 By: Thomas N. Beckom, Esq.</p> <p>5 9510 West Sahara Avenue, Suite 200</p> <p>6 Las Vegas, Nevada 89117</p> <p>7 For Defendant Resources Group, LLC:</p> <p>8 Law Offices of Michael F. Bohn</p> <p>9 By: Denise Mikrut, Esq.</p> <p>10 176 East Warm Springs Road, Suite 140</p> <p>11 Las Vegas, Nevada 89119</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 4</p> <p>1 DAVID ALESSI,</p> <p>2 having been first duly sworn, was examined and testified</p> <p>3 as follows:</p> <p>4 EXAMINATION</p> <p>5 BY MR. BECKOM:</p> <p>6 Q All right. Can you please state and spell your</p> <p>7 name for the record.</p> <p>8 A David Alessi, A-l-e-s-s-i.</p> <p>9 Q Okay. And what brings you here -- I guess what</p> <p>10 brings you here today, Mr. Alessi?</p> <p>11 A I am the PMK for Alessi & Koenig. I'm here to</p> <p>12 go over the foreclosure file with you.</p> <p>13 Q Okay. Have you ever had your deposition taken</p> <p>14 before?</p> <p>15 A Yes, approximately 110 times this year.</p> <p>16 Q Just this year, huh?</p> <p>17 A Yes.</p> <p>18 Q Well, a lot of this is going to seem like old</p> <p>19 hat. The court reporter gave you an oath to tell the</p> <p>20 truth in this matter. Please be advised that this is the</p> <p>21 same kind of oath that you would give in a courtroom, so</p> <p>22 the same penalties of perjury apply to any testimony you</p> <p>23 give here today. Do you understand?</p> <p>24 A Yes.</p> <p>25 Q Okay. A couple of things don't transcribe well</p>

1 on court transcripts, uh-huhs, uh-uhs, nods of the head.
2 I might understand you. Denise here might understand
3 you. But it will not reflect well on a court transcript.
4 So please try to avoid those kinds of gestures or
5 statements in response to questions. Do you understand?
6 A Yes.
7 Q Our court reporter has very many talents. One
8 of them is not transposing two people at the same time.
9 So please make sure that you wait for me to fully finish
10 my question before answering. Do you understand?
11 A Yes.
12 Q Have you had any alcohol or drugs or any other
13 substances in the last 24 hours that would affect your
14 ability to give testimony here today?
15 A No.
16 Q Is there any other reason why you can't give
17 your best testimony here today?
18 A No.
19 MR. BECKOM: And I guess let the record reflect
20 that Mr. Alessi is under a trial subpoena for another
21 matter. Should he be called away I guess, will you
22 stipulate to reschedule at an appropriate time?
23 MS. MIKRUT: Yes.
24 MR. BECKOM: Okay. So let the record reflect
25 that both parties to this action will stipulate to

1 continue the deposition at an appropriate time in the
2 event Mr. Alessi is called away.
3 (Exhibit 1 marked)
4 BY MR. BECKOM:
5 Q Have you seen Exhibit 1 before?
6 A Yes.
7 Q Can you explain to me what it is that we are
8 looking at?
9 A There is an --
10 Q Go ahead.
11 A There is an affidavit from me as custodian of
12 records. And I believe this is also a copy of our file
13 on this matter.
14 Q And what do you mean by file? Are you referring
15 to the foreclosure file --
16 A Yes.
17 Q -- for 4254 Rollingstone Drive --
18 A Yes.
19 Q -- Las Vegas, Nevada 89103?
20 A Correct.
21 Q Okay. Can you take a minute and just kind of go
22 through this and let me know -- This is your entire
23 foreclosure file?
24 A Yes.
25 Q And is there any -- These documents, do they

1 get -- are they kept in any kind of system at all?
2 A Yes. We have an electronic program. One of the
3 tabs in the program is a letters and notices tab. That
4 is where the documents are saved or scanned into that
5 would constitute our file.
6 Q And then how do these documents get saved and
7 input into the file?
8 A They're either PDFed or scanned or just saved
9 directly from an email, or if we print a Notice of
10 Delinquent Assessment or Notice of Default, the program
11 automatically saves a copy of that Notice into the
12 letters and notices tab.
13 Q Who inputs these documents into your system?
14 A It depends on who the legal assistant is. At
15 the time it looks like there is a Mary Indalecio, I-n --
16 Sorry. Check that. Attorney Ryan Kerbow signed the
17 Notice of Trustee's Sale. Mary Indalecio,
18 I-n-d-a-l-e-c-i-o, signed the Notice of Default. So she
19 would have been the one to print it at that time.
20 Q And so they are input into your system at or
21 near the time that they are generated and/or received?
22 A Correct.
23 Q Okay. And you have no reason to believe that
24 the documents I have set before you -- And I guess your
25 office -- Let this reflect that these were documents

1 produced to U.S. Bank pursuant to the subpoena and they
2 were Bates stamped by Alessi & Koenig as A&K000001
3 through A&K000144.
4 Do you have any reason to believe that there is
5 anything wrong with these documents?
6 A No.
7 Q Okay. Let's take a look at A&K000001. I guess
8 let's start with some foundation first.
9 What do you do at Alessi & Koenig?
10 A I do a lot of depositions. I'm one of the
11 founding members of the firm. I was previously an HOA
12 manager. So I have been in the HOA industry for
13 approximately 20 years now. I do marketing. I do not
14 practice law. As you know, I'm a California lawyer. I
15 do not practice law in Nevada. I don't, for that matter,
16 practice law in California either.
17 Q Is there a reason why you don't practice law in
18 California?
19 A I just choose not to.
20 Q Fair. And then how long -- You said you founded
21 Alessi & Koenig?
22 A I was one of the founding members, Robert Koenig
23 and myself, early 2000s.
24 Q How do you know Robert Koenig?
25 A I have known Robert Koenig since the late 1990s.

Page 9	Page 11
<p>1 He is a friend of mine. We were -- are neighbors -- were 2 neighbors in southern California. I finished my last 3 year of law school or last semester of law school at 4 Pepperdine. He graduated from Pepperdine Law. We worked 5 together in Malibu, California before I moved to Las 6 Vegas. I have known Robert for quite a long time. 7 Q Okay. Let's go on to A&K -- I'm going to omit 8 the zeros and just go with A&K1. 9 A Okay. Yes. A&K1 is the -- what I call the back 10 end of the online status report. These are the data 11 fields that would be transposed into the online status 12 report that the HOA and the management company have 13 access to via a username and password 24/7. As you can 14 see on the left column, there are names. That would be 15 the names of the individuals who entered the information 16 underneath the heading Activity. The date I believe is 17 automatically populated the day that the entry is made. 18 Q Okay. So anytime an action is taken on a file 19 at Alessi & Koenig it would be input on this screen? 20 A Yes. 21 Q Okay. Would there be any activities that were 22 taken on this file that would not have been inputted on 23 the screen? 24 A Not that I can think of. 25 Q Okay. So let's start with -- Do you have a</p>	<p>1 the day-to-day activities of the file for the association 2 would be their -- the manager's primary contact. We 3 represent several dozen HOA management companies and 4 several hundred HOAs, so I don't have a specific 5 recollection. I believe the owner of Old West Realty was 6 Judy Fenner. 7 Q Judy Fenner? 8 A Fenner I believe. 9 Q But you have no specific recollection of your 10 interactions with Ms. Fenner? 11 A I don't know if -- I don't know that I ever 12 spoke to her. If I did, it may have been once or twice, 13 years and years ago. 14 Q Okay. 15 A I don't have any specific recollection. 16 Q Okay. Let's move on to A&K number 3. Can you 17 tell me what it is that we are looking at? 18 A A&K number 3 is a Real Property Parcel Record. 19 We pull this record at the beginning of the foreclosure 20 process when a file is opened. 21 Q Why do you pull this record at the beginning of 22 the foreclosure process when a file is opened? 23 A The record gives us the parcel number which we 24 will need for the foreclosure process. It also instructs 25 us as to whether or not there is an off site mailing</p>
Page 10	Page 12
<p>1 recollection about who you were conducting a foreclosure 2 sale on behalf of? 3 A Well, I had looked at a ledger in the file. I 4 believe the name of the association was Glenview West 5 Townhomes. 6 Q And then how do you know Glenview West 7 Townhomes? 8 A Well, I mean, I know them as one of our clients. 9 I don't have a specific knowledge of that association. 10 Q You have never spoken with any of their 11 community managers? 12 A I don't know if I have spent -- I believe I have 13 spoken with their community manager. I believe their 14 community manager was Old West Realty. I don't believe 15 that I have spoken to any of the board members at 16 Glenview. At least I have no recollection of having done 17 so. 18 Q Do you have any recollection about who the 19 specific person was at the management company that you 20 spoke with? 21 A No. 22 Q Okay. Do you know how many times you spoke with 23 this person? Do you recall? 24 A No. I don't -- I don't -- I wouldn't have been 25 the main contact person. The legal assistant handling</p>	<p>1 address for the homeowner as well as offering the legal 2 description of the property. It gives us the recorded 3 document number for the Deed of Trust or the Grant Deed. 4 Q Okay. So this is the document that you rely on 5 to get all your information for your foreclosure notices? 6 A Not -- Well, not all of it, but a starting 7 point. 8 Q Understood. Is there any other information you 9 get from this document other than the name of -- I guess 10 the legal description and the mailing address of the 11 homeowner? 12 A Well, we would have the recorded document number 13 for the last transfer of title. And we may 14 cross-reference that to pull that actual document. 15 Q Does your office analyze the form or the area 16 called real property assessed value at all during this 17 process? 18 A No. We wouldn't analyze that during this stage 19 of the process. There may be some reference to the 20 assessed value after the property sells, but I don't know 21 that it's altogether relevant at this stage of the 22 process. 23 Q So at no point in time do you take notice of the 24 total -- like the area in this document that says total 25 taxable value?</p>

1 A I don't know if at no point in time. Like I
2 said, there were different recorders that were working at
3 the Clark County Recorder's Office between 2012 and 2015.
4 And as I testified before, my understanding is that one
5 of the recorders required that the document carry
6 transfer tax, be set at the assessed value of the
7 property. My understanding is that another recorder
8 required that that number be calculated based upon the
9 amount that the property sold at the trustee's sale. So
10 in that way the assessed value of the property became
11 somewhat relevant.

12 Q Understood. So let's move on then to A&K number
13 6.

14 A So A&K number 6 is a PACER -- what is titled a
15 PACER Case Locator. This is a document that we would
16 pull to discover whether or not the homeowner was in
17 bankruptcy.

18 Q And based on I guess your review of this
19 document, was the homeowner in bankruptcy at the time
20 this file was referred to you?

21 A The homeowner's name is George Edwards. It
22 looks like the property is held in a trust. I don't know
23 if I would be able to tell if the same George Edwards was
24 in bankruptcy simply by looking at this document. My
25 understanding is that there may have been a bankruptcy

1 issue. But I don't see reference to any on the status
2 report.

3 Q Is there any other reason that you would review
4 bankruptcy records other than to determine if the
5 borrower was in bankruptcy?

6 A No. That would be the reason. As you know, if
7 a borrower is in bankruptcy, an automatic stay is
8 created. So we would want to know whether or not a
9 borrower or in our case a homeowner in the association
10 was in bankruptcy.

11 Q How many times do you review for bankruptcies
12 during the course of litigation -- not litigation,
13 foreclosure?

14 A We check for bankruptcies at each stage of the
15 process. So we would be looking -- so generally two,
16 three -- two or three times.

17 Q When do those two or three times happen?

18 A When we open the file, when a Notice of Default
19 is recorded and when a Notice of Trustee's Sale is
20 recorded. We would also check for a bankruptcy when
21 the -- shortly before the Notice of Trustee's Sale is
22 cried.

23 Q Okay. So --

24 A We could call that a sale date.

25 Q So it's before the Notice of Default and the

1 Notice of Sale and shortly before the actual sale?

2 A Correct. And also when we open the file, but
3 generally at the Notice of Delinquent Assessment stage.

4 Q And there would be no other reason that you
5 would review for a bankruptcy?

6 A We would be looking for a bankruptcy -- We would
7 be looking to see if the delinquent homeowner has filed
8 bankruptcy to see whether or not the automatic stay is in
9 effect.

10 Q I believe you stated previously that A&K001,
11 that was a record of everything that had gone on on this
12 file, correct?

13 A Generally that is a record -- Well, I don't know
14 if it's everything that had gone on. I think your
15 question was all activities. And I actually thought to
16 ask you how you define that. But all relevant activities
17 that we would want to communicate to our client would be
18 on the status report.

19 I don't know if every interoffice note would be
20 there or non-relevant activities that the legal
21 assistant -- There may be certain -- When you said
22 activities, I took that to mean the steps in the
23 foreclosure process related to the file. Maybe you want
24 to define it.

25 Q It looks like -- I'm not seeing any notations

1 for bankruptcy searches. Is it fair to say that
2 bankruptcy searches are not indicated on your ledger,
3 A&K1 and 2?

4 A I see. That is correct. We would not make a
5 note in the status report that we did a PACER search.

6 Q Is there any reason why?

7 A No.

8 Q Okay. Let's go on to A&K8.

9 A A&K8 is a Notice of Intent to Lien dated
10 November 3rd, 2010. It shows that there is a certified
11 mail receipt copied onto the face of the document,
12 reflecting that the document was mailed certified
13 November 3rd, 2010. We also mailed this document regular
14 mail, regular First-Class Mail.

15 Q Who all do you mail this document to?

16 A We mail this document to the delinquent
17 homeowner only.

18 Q Why do you only mail it to the delinquent
19 homeowner?

20 A That's just our policy.

21 Q Why is that your policy?

22 A That is our Nevada counsel's opinion as to what
23 the statute requires and the association's collection
24 policy.

25 Q Understood. And I'm looking at A&K number 9.

1 That looks like a copy of the same thing as A&K number
2 10; is that correct?
3 A Correct.
4 Q Okay.
5 MS. MIKRUT: You mean number 8.
6 MR. BECKOM: I'm sorry. A&K number 8. Thank
7 you.
8 THE WITNESS: Correct.
9 MR. BECKOM: You're supposed to object to form.
10 MS. MIKRUT: That didn't have to be on the
11 record.
12 MR. BECKOM: No. That's fair.
13 THE WITNESS: And the accompanying five-page
14 ledger, A&K10 through 15, you can see that -- I'm
15 sorry -- 10 through 14. You see the handwritten
16 "Intent." There is also our trustee sale number or our
17 HO number. That's our internal fingerprint of the
18 property, "24230." So this ledger would have been what
19 we received when we opened the file.
20 BY MR. BECKOM:
21 Q So the HOA sends you this ledger?
22 A Correct.
23 Q Okay. Now, it says that \$1,855 was due as of
24 November 3rd, but in your ledger it shows that -- It
25 looks like it says -- On A&K14 it says \$1,310 was due.

1 And it looks like they added in another \$130 for a
2 November 2011 assessment for a total of \$1,440. Can we
3 agree on that point?
4 A Yes.
5 Q Where does the \$1,855 number come from then --
6 A It is the --
7 Q -- as shown in Exhibit A&K9?
8 A It is the \$1,440 amount plus the intent to lien
9 fee that's charged by our law firm. I believe it was
10 either a hundred -- I don't know what it was back in
11 2010, but it is I believe \$150. And then there is the
12 third fee which would be the management company audit
13 fee, which is currently set statutorily at \$200. That is
14 a fee that goes to the management company for the work
15 done when a file is turned over to collections. I don't
16 know what this management company charged in 2010, but it
17 would be the sum of those three numbers.
18 Q Understood. Let's go on to A&K number 15.
19 A So this --
20 Q Can you tell me what it is we are looking at?
21 A This is a lien letter dated December 20, 2010.
22 It shows that it was -- It's got a certified mail receipt
23 copied to the cover of it. And this is a cover letter
24 that we mailed to the delinquent homeowner after the
25 expiration of the due date pursuant to the Notice of

1 Intent to Lien informing the homeowner that a lien is
2 being placed on the property.
3 This Notice is mailed certified and regular
4 mail, again, to the homeowner only. Again, the reason
5 for that is that that is what our Nevada attorneys feel
6 is consistent with the statute as well as the
7 association's governing documents and collection policy.
8 Q Okay. Let's go on to A&K number 17.
9 A So A&K number 17 is a Pre-Notice of Default.
10 This is sort of a last warning to the homeowner prior to
11 a Notice of Default being recorded. We warn them that
12 the next step involves substantial additional charges and
13 if they hope to avoid those charges, they need to contact
14 our office to bring the account current. This notice is
15 mailed to the delinquent homeowner only and it is mailed
16 regular mail.
17 Q Did you hear any response from the Edwards
18 George R. Trust in response to that?
19 A So I'm looking at A&K1, our online status
20 report. I note that there is an entry December 20, 2010,
21 "No contact from property owner," same entry February
22 2nd, 2011. So it does not appear that we received any
23 communication from the delinquent homeowner.
24 Q And so what's the next step in your process
25 after you send this Pre-Notice of Default letter?

1 A The next step in the process is the Notice of --
2 If we are not -- If the homeowner does not contact us,
3 the next step in the process is the recording of a Notice
4 of Default.
5 Q Is it fair to say -- All of these documents you
6 produced to us, are they in chronological order?
7 A It looks like it.
8 Q Okay. So this next one here, it looks like
9 A&K18 through 22. What is it that we are looking at?
10 A So 18 is a copy of the title report that we
11 order from in this case First American Title. As you can
12 see on A&K19, there is a list of encumbrances that
13 show -- The document shows that U.S. Bank has a mortgage
14 on the property dated March 26, 2009 in the amount of
15 \$50,000 as well as a claim of lien by Republic Services.
16 The document also shows the lien that was
17 recorded by our office on behalf of Glenview West on
18 January 4th. This document is a document that we use to
19 obtain the parties that we mail the Notice of Default to.
20 Those parties include Republic Services in this case as
21 well as the first mortgage holder and the delinquent
22 homeowner.
23 Q Okay. So this is what you use to determine who
24 you mail to, correct?
25 A Correct.

1 Q Okay. A&K number 23, this looks like another
2 printout of the Assessor's Web site. Why would this be
3 in your file at this juncture?
4 A It looks like the legal assistant checked the
5 parcel record again to confirm ownership. It looks like
6 they also, as I stated earlier in my testimony, did pull
7 the Deed of -- the Deed of Trust. That's A&K26
8 through -- This goes on for several pages. There is also
9 a copy of the Notice of Default on A&K46 showing that the
10 Notice of Default was recorded March 29th, 2011.
11 Behind the Notice of Default on A&K47 are copies
12 of the Notice having been mailed to Republic Services as
13 well as the Law Office of A.J. Kan, K-u-n, Kun. A&K44
14 shows that the -- So A&K44 gives a list of the parties
15 that the Notice of Default was mailed to. The first
16 party being the delinquent homeowner. The Notice of
17 Default was mailed to the delinquent homeowner via
18 certified mail and then to all other parties via regular
19 mail.
20 Q Who is Robert Hazel? It's on A&K44.
21 A That's a good question. You can see that there
22 is on A&K34 a quitclaim deed requested by Robert Hazel.
23 And it gives an address in Fontana, California.
24 Q Understood. And where do you get these
25 addresses to perform your mailings from?

1 A From both our search of the public records -- We
2 have an in-house title researcher primarily -- and also
3 from the report that we get, the title report that we get
4 from in this case First American Title.
5 Q Fair enough. I'm going to go back to A&K26.
6 A Yes.
7 Q There is an address on here that says, "Prepared
8 by: Southwest Financial Services, Ltd., 537 East Pete
9 Rose Way, Suite 300, Cincinnati, Ohio 45202."
10 Do you see what I'm referring to?
11 A Give me a second. Yes.
12 Q Now I'm going to go back, flip back to A&K
13 number 44. I'm not seeing that address listed on your
14 mailings. Can we agree on that point?
15 A Correct.
16 Q Is there a reason why you did not mail the
17 Notice of Default to Southwest Financial Services?
18 A Our Nevada counsel felt that by mailing to U.S.
19 Recordings, the entity shown just below Southwest
20 Financial Services on that same Deed of Trust cover page,
21 was sufficient to meet the requirements of NRS 116. And
22 that address is U.S. Recordings, 2925 Country Drive,
23 Suite 201, St. Paul, Minnesota 55117.
24 Q So you would have had an attorney make the
25 determination about who should have received notice and

1 mailings and all that other good stuff?
2 A In the end that is who would be responsible. I
3 don't know that that is who made the determination on
4 this file. I don't have any specific knowledge of how
5 that determination was made. But an attorney does review
6 the -- all the foreclosure files prior to the properties
7 going to sale. And one of the important aspects of our
8 Nevada counsel's review of each file is that the mailings
9 were done properly.
10 Q Understood. I'm going to go back to A&K number
11 26.
12 A Yes.
13 Q I would like you to go down to the bottom of the
14 page under where it says "Lender." It says, "U.S. Bank
15 National Association ND, a national banking association
16 organized under the laws of the United States, 4325 17th
17 Avenue Southwest, Fargo, North Dakota 58103."
18 Do you see what I'm referring to?
19 A Yes.
20 Q Now, flipping back to A&K number 44, can we
21 agree that no Notice and that there is not a mailing
22 address listed for U.S. Bank National Association in
23 Fargo, North Dakota?
24 A I do see that address listed on A&K50 and --
25 Q Well, let's stick with A&K44. So no -- So the

1 Notice of Default was not mailed to the address for the
2 lender. Can we agree on that?
3 A It does -- It appears that the Notice of Default
4 was not mailed to U.S. Bank National Association ND at
5 their Fargo, North Dakota address. It does, however,
6 appear that the Notice of Trustee's Sale was mailed to
7 that address.
8 Q Well, we will get to the Notice of Trustee's
9 Sale in just a second.
10 And then can we also agree that the Notice of --
11 Now, do you see where it says "Trustee" and it says, "U.S.
12 Bank Trust Company, National Association, a national
13 banking association organized under the laws of the
14 United States"? It says, "111 Southwest 5th Avenue,
15 Portland, Oregon 97204."
16 Do you see what I'm talking about on A&K26?
17 A Yes. And it does not, to answer your next
18 question, appear that the Notice of Default was mailed to
19 that address either.
20 Q Is A&K required to mail the Notice of Default to
21 the lender under a Deed of Trust?
22 A Our Nevada counsel analysis of this foreclosure
23 was must have been that by mailing to U.S. Recordings,
24 that was sufficient to give notice to the lender in this
25 case.

1 Q Do you have any reason to believe that U.S.
2 Recordings and U.S. Bank are the same entity?
3 A I have no idea. I have no reason to believe --
4 believe either way. They have different addresses.
5 Q As you review this, is it your opinion -- Well,
6 I guess let me go back a little bit.
7 You do a lot of -- Alessi & Koenig does a lot of
8 HOA foreclosure work; is that correct?
9 A Yes.
10 Q And you have a lot of experience in this field
11 of HOA foreclosures; is that correct?
12 A Yes.
13 Q In your opinion then do you think it was -- In
14 your opinion do you think it was correct to not mail the
15 Notice of Default to the lender in Fargo, North Dakota?
16 A I don't know. I would defer to a judicial body
17 to answer that question. I don't know -- I can testify
18 that our Nevada counsel felt that it was -- that it was
19 correct to mail the Notices the way they were mailed. I
20 would imagine that it would depend on what court you were
21 in.
22 Q If you were to conduct a foreclosure today,
23 Alessi & Koenig, would you allow a foreclosure to go
24 forward if a Notice of Default had not been mailed to the
25 lender at their address?

1 A That would be a question that I would defer to
2 our Nevada counsel. I would not be the one to make that
3 call. I believe that the statutes are much different now
4 than they were back in 2010. In 2015 there were
5 amendments to the statute changing the requirements for
6 mailing. I believe that the banks are required to list
7 their addresses on a specific Web site.
8 So I don't know that the answer now would be the
9 same as it was back in 2010. In any event I wouldn't be
10 the one at my office making that call. I don't know if
11 the mailing of the Notice of Default to the entity listed
12 on the Deed of Trust, that the document is to be returned
13 to, is sufficient to constitute notice to the lender. I
14 don't know the answer to that question.
15 Q Does Alessi & Koenig typically mail Notices of
16 Default to lenders?
17 A Well, as I said earlier, you know, the Notice of
18 Trustee's Sale was mailed to the lender. I can testify
19 that I wouldn't have minded seeing the Notice of Default
20 mailed to the lender. I just don't know the legal import
21 of it not being mailed to the lender at this time.
22 Q I don't think you answered my question. Does
23 Alessi & Koenig as a pattern and practice email -- or
24 mail Notices of Default to the lender?
25 A Our current policy, as I said, is not -- I

1 wouldn't think would be the same as it was back in 2010.
2 The laws have changed quite a bit since then in regard to
3 the mailing of the Notice of Default. You know, we are
4 going back six years. And I just don't know what the
5 answer is. I have done, as I said, 110 depositions. I
6 don't know what the import of the NOD being mailed to
7 U.S. Recordings would have on the effect of the
8 foreclosure. I just don't --
9 Q So Alessi & Koenig as a pattern and practice
10 does not mail the Notice of Default to the lender?
11 A Well, I mean, I don't know that you could say
12 that we did not mail the Notice of Default to the lender
13 in this case. That's the whole question, right, whether
14 or not mailing to U.S. Recordings constitutes notice to
15 the lender for purposes of this foreclosure pursuant to
16 this Deed of Trust. I'm sure that our Nevada counsel
17 would argue that we did mail notice to the lender. I'm
18 sure you would argue that we didn't.
19 Q I guess another question then. In 2009 was
20 Alessi & Koenig mailing Notices of Default for HOA
21 foreclosures to lenders in general?
22 A Yes.
23 Q And we can agree in a yes or no question that
24 U.S. Bank National Association was not mailed the Notice
25 of Default at their Fargo, North Dakota address for this

1 property?
2 A I would agree with you that they were not mailed
3 the Notice of Default at that Fargo, North Dakota
4 address. I wouldn't go so far as to agree with you that
5 the lender in this foreclosure was not given notice.
6 That would be above my pay grade. I would defer to a
7 court to answer that question.
8 MS. MIKRUT: And your answer actually obviates
9 my need for an objection, so thank you.
10 BY MR. BECKOM:
11 Q And we can also agree that U.S. Bank Trust
12 Company was not mailed the Notice of Default at their
13 Portland, Oregon address?
14 A That's correct. It does not look like they were
15 mailed a Notice of Default at their Portland, Oregon
16 address according to the list on A&K44.
17 Q Who is your attorney that reviewed this
18 foreclosure?
19 A I don't know. It was, as you know, a long time
20 ago. I did note that Ryan Kerbow signed the Notice of
21 Trustee's Sale, but I don't know that Ryan Kerbow was the
22 one who reviewed the NOD.
23 Q How long had Mr. -- So Mr. Kerbow was working
24 for you in 2009?
25 A I don't recall. I will say, though, that his

1 signing of the Notice of Trustee's Sale in September of
2 2011 would indicate that he did review all of the
3 mailings prior to authorizing the sale.
4 Q And so you believe that Mr. Kerbow most likely
5 reviewed the mailings for the Notice of Default, correct?
6 A Yes.
7 Q Okay. Let's move on because I know you're dying
8 to get to that Notice of Sale.
9 A&K43, what is that that we are looking at?
10 A I believe this is a ledger that was sent to us
11 by the management company. It does not look -- It's not
12 one of -- It is a ledger sent to us by the management
13 company. It's not one of our documents.
14 Q Okay. Number 44, which is -- A&K44 is your
15 mailings list for the Notice of Default, correct?
16 A Yes.
17 Q And then A&K46, is the Notice of Default you
18 were referring to?
19 A Yes.
20 Q Who is Mary Indalecio?
21 A She was a former legal assistant. She no longer
22 works for the company.
23 Q Is there any reason why she no longer works for
24 the company?
25 A Not in particular.

1 Q Was she terminated or did she resign?
2 A That was back in 2011. She was -- I believe she
3 was terminated.
4 Q What was the reason she was terminated?
5 A I don't know. She wasn't doing her job
6 adequate.
7 Q So you had issues with Mary Indalecio --
8 A Yeah. It was several years later. She wasn't
9 as a legal assistant. She had moved departments. She
10 wouldn't have been the one to make the call on the
11 mailings though.
12 Q How was she not doing her job correctly?
13 A She was -- I don't recall. I'm not the one that
14 terminated her. But it wasn't, I can tell you, in any
15 way relevant to this file.
16 Q Is that you know and you're refusing to testify
17 or that you don't know but you don't think it was
18 relevant to this foreclosure?
19 A I know that it wasn't relevant to this
20 foreclosure. I wasn't the one that made the call on
21 terminating her. It was not -- It did not have anything
22 to do with her performing as a legal assistant.
23 Q What did it have to do with?
24 A I think it was in her performance doing the
25 receivables and payables. But that wasn't my department,

1 so I don't know the specific reasons. But again, it had
2 nothing to do with this file.
3 Q But she did have a history of -- I guess was
4 it -- Was Ms. Indalecio not performing according to
5 Alessi & Koenig's policies and procedures and that's why
6 she was terminated or was there some other reason?
7 A I don't recall the specific reason except to say
8 that it didn't -- it did not pertain to this file.
9 Q Did you ever have issues with Ms. Indalecio not
10 following the policies and procedures of Alessi & Koenig?
11 A I'm -- I'm -- I don't -- Not in any manner that
12 was relevant to this file, just in a normal performance
13 type of manner. But there is nothing that I would feel
14 comfortable disclosing as I don't feel it would be
15 relevant to this foreclosure.
16 Q So you're declining to answer?
17 A Well, I don't have an answer for you. I can
18 just tell you I prepared for this deposition. I didn't
19 prepare for questions about why an employee might have or
20 might not have been terminated on matters unrelated to
21 preparation of this deposition. So I know in preparation
22 for this deposition, there was nothing that I uncovered
23 that pertained to Ms. Indalecio's termination. That was
24 not part of the scope of what I was called to testify to.
25 Q But you do have a specific knowledge as to why

1 Ms. Indalecio was terminated; do you not?
2 A No, not one that is -- I would feel -- I'm not
3 prepared to give. It was -- I know -- I can state it was
4 probably four years ago. We have had several dozens of
5 people working at Alessi & Koenig over the years. So the
6 reasons for her termination or not for her termination
7 are just not -- it's not an area that I'm prepared to
8 testify on today.
9 Q But can you testify?
10 A No, because I'm -- I wouldn't be able to give
11 you an answer that I would be comfortable with based upon
12 my recollection.
13 Q So --
14 A I would have go back and look at the records in
15 her file, see why she was terminated and get a -- You
16 know, I'm just not prepared to answer why this specific
17 employee was terminated, you know, several years ago.
18 Q I'm going to ask two more questions and we most
19 likely will move on.
20 So your testimony is you don't remember why Ms.
21 Indalecio was terminated over and above just misconduct?
22 MS. MIKRUT: I just want to lodge an objection
23 for relevance.
24 THE WITNESS: Correct.
25 BY MR. BECKOM:

1 Q Is there someone in your organization that would
2 know why Ms. Indalecio was terminated?

3 MS. MIKRUT: Same objection.

4 THE WITNESS: I -- I don't know that anybody
5 there would know, but I can find out. It was several
6 years ago. Our Nevada counsel is different than it was
7 when she was terminated. So I would have to do some
8 research.

9 BY MR. BECKOM:

10 Q But you know it was for something to do with not
11 doing her job correctly?

12 A Well, I would imagine. That's why people get
13 terminated. I -- I don't -- Yeah, so I would say yes to
14 that.

15 Q Okay. Fair enough. I'm going to let you off
16 the hot seat on that one.

17 A Okay. Thank you.

18 Q Let's go to A&K number 49. Can you tell me what
19 it is that we are looking at?

20 A Yes. This is a Notice of Trustee's Sale dated
21 September 16, 2011. Behind it you will find on A&K50 the
22 NOTS list of mailings. Each of these parties on the list
23 were mailed the Notice of Trustee's Sale via certified
24 and regular mail.

25 Q Okay. Now, on this one -- I know you were dying

1 redaction log. I don't see anything in the status
2 report. I don't see anything in the Notices. So I don't
3 know why we mailed the NOTS to those entities and not the
4 NOD.

5 Q Is this something that you see a lot at Alessi &
6 Koenig where the Notice of Sale is mailed to more people
7 than the Notice of Default?

8 A Well, we always see that it's mailed to the
9 ombudsman in addition to the parties mailed the Notice of
10 Default. I wouldn't say I see it a lot. There are
11 Assignments of Deeds of Trusts oftentimes in files that I
12 have reviewed. We mail to prior parties in interest as
13 well as current parties in interest. So I have seen
14 where the list for the Notice of Trustee's Sale does
15 contain more entities, but I would not say that it is
16 common.

17 Q Let me just so I can get my head around it -- So
18 you're always going to see the ombudsman added on the
19 Notice of Trustee's Sale, correct?

20 A Correct.

21 Q And then from there, if there is an assignment
22 that has happened between the Notice of Default and the
23 Notice of Trustee's Sale, then that new entity that's
24 taking the assignment would be added on; is that correct?

25 A Yes.

1 to testify on this. On this one your testimony is that
2 you did mail it to U.S. Bank or at least the -- This is
3 for the Notice of Sale, correct?

4 A Yes.

5 Q How do you know that?

6 A U.S. Bank's address in Portland, Oregon and U.S.
7 Bank's address -- Well, one is U.S. Bank Trust Company in
8 Portland, Oregon and the other U.S. Bank National
9 Association in Fargo, North Dakota. Both of those
10 entities now appear on our list of parties that the
11 Notice was mailed to. So for that reason my testimony is
12 that they were mailed the Notice of Trustee's Sale. And
13 you have -- You can see on the attached A&K51 and 52
14 copies of the actual certified mail receipt to those
15 entities.

16 Q Is there any reason why you would have mailed it
17 to -- the Notice of Sale to more people than the Notice
18 of Default?

19 A Well, the Ombudsman's Office the Notice of
20 Trustee's Sale is required to be mailed to. The Notice
21 of Default is not. Why the U.S. Bank National
22 Association and U.S. Bank Trust Company were mailed the
23 Notice of Trustee's Sale and not the NOD, I don't have
24 any answer for that in the file. I don't see anything in
25 the notes. I don't see anything in the privileged and

1 Q But it is not common to see such a large
2 discrepancy between the Notice of Trustee's Sale and the
3 Notice of Default as is shown in this file?

4 A Correct. You see on A&K34 and 35 there is a
5 quitclaim deed. That is somewhat unusual. That
6 quitclaim deed resulted in us adding -- resulting in us
7 adding Robert Hazel to the mailing list. But that is not
8 very common that you see a quitclaim deed in a file.

9 Q Understood. And then on A&K51, these are
10 certified mail receipts?

11 A Yes. So we mailed the Notice of Trustee's Sale
12 certified and regular mail to each of these entities as
13 well as the entities on A&K52.

14 Q What's that stamp on those?

15 A That is a date stamp. The postman, post office
16 places that stamp -- That's my understanding -- on the
17 certified mail receipt. We don't have that stamp.

18 Q Now, how do you know if -- How do you know if
19 the Notice of -- Well, how do you know if the certified
20 mail is received? Do you have any record of that?

21 A We do. If the certified notice is signed for,
22 we retain the green cards in an off site storage
23 facility. My understanding is it's in chronological
24 order. But we have stacks, as you can imagine, of
25 thousands of them. We don't -- We didn't and we -- I

1 don't believe we do currently scan those green cards into
2 our program.
3 Q I see. I'm going to move over to A&K54. It
4 looks like this is a cashier's check from a Robert Hazel
5 to Alessi & Koenig for \$700.
6 Did you receive a cashier's check from Robert
7 Hazel for \$700?
8 A I believe so.
9 Q Do you know why he paid you \$700?
10 A I believe it was a partial payment. I don't
11 know the specific reason for it. But I was when I went
12 over the file this morning aware of this payment. I was
13 made aware of this payment.
14 Q Robert Hazel had received a quitclaim deed from
15 the George Edwards Trust at that time, correct?
16 A Correct.
17 Q And he attempted to pay you \$700, correct?
18 A I don't --
19 Q Or did he pay you \$700?
20 A I mean, I see we produced a copy of the
21 cashier's check inasmuch as it was saved into this file.
22 My understanding would be that that would have been a
23 payment from Mr. Hazel to our office November of 2011 for
24 \$700.
25 Q Did you -- Do you have any recollection or is

1 there anything in your file discussing any communications
2 with Mr. Hazel?
3 A I did not see any references in the file to
4 communications with Mr. Hazel other than the copy of the
5 cashier's check that we produced and a copy of the
6 receipt that we produced.
7 Q Okay. And it looks like going back to A&K1 and
8 2 that this payment was noted in your system; is that
9 correct?
10 A I see that there was a progress -- Yes. I see
11 that there was a progress payment cut to Glenview West
12 Townhomes on October 26, 2011 for \$414.40. My assumption
13 is that that would have been a portion of the \$700 that
14 was received and noted on 11-24-2011, a partial payment
15 received, a 10-day waiting period for the funds to clear.
16 So yes, those two entries at the top of A&K02 refer to
17 the \$700 payment.
18 Q And looking at -- It looks like the cashier's
19 check and your receipt is dated November 16 on A&K54.
20 Can we agree on that?
21 A Yes.
22 Q Why then on A&K1 and 2 is the partial payment
23 not inputted until eight days later, on November 24th?
24 A I don't -- I don't know.
25 Q Do you know if there was any communications with

1 Mr. Hazel that the HOA sale would be postponed?
2 A I do not believe -- I did not see any such
3 communications with Mr. Hazel.
4 Q Did you agree to postpone the HOA sale in
5 exchange for the \$700 cashier's check?
6 A I don't know that the HOA sale was postponed.
7 Was it? Let's see. The property sold January 25th,
8 2012. It looks like it was in -- I don't know. It looks
9 like it may have been. The original date of the sale was
10 November 16, 2011. It looks like -- I can see now that
11 the -- Mr. Hazel brought in a check for \$700 at that
12 time. I don't know what discussions surrounded that
13 payment. But it does appear that that resulted in the
14 postponement of the sale for a couple of months.
15 Q Okay. Do you know who would?
16 A Who would know?
17 Q Uh-huh.
18 A We did -- No. Outside of these entries in the
19 status report, I doubt that anybody from my office would
20 have a specific recollection of the facts and
21 circumstances surrounding that payment.
22 Q Understood. Let's move on then to -- So I think
23 your records show that the HOA -- that you sold this
24 property on behalf of the HOA on January 25, 2012; is
25 that correct?

1 A Yes.
2 Q Understood. All right. And then A&K55 shows --
3 It's two cashier's checks, one for \$5,000, one for
4 \$10,000, plus cash of \$460 from Resources Group, LLC.
5 Who is Resources Group, LLC?
6 A I am assuming it was the investor who purchased
7 the property at the sale.
8 Q Do you know who represented Resources Group, LLC
9 at the sale?
10 A I believe it was Eddie Haddad, but I don't have
11 a specific recollection of that. The reason I say that
12 is because Mr. Haddad's attorney is here at this
13 deposition, so that would be my assumption.
14 Q If I moved over to A&K60 and showed you a
15 cashier's check from Iyad Haddad -- or it says, "Pay to
16 the order of Iyad Haddad."
17 Would that refresh your recollection in terms of
18 Mr. Haddad being involved in this sale?
19 A No, but it would further bolster my assumption.
20 I don't have any specific recollection of this sale.
21 Q Fair enough. Let's go over to A&K57. Who is
22 Sin City Realty, LLC?
23 A That is an entity that we used, a third party,
24 to cry sales for a brief period of time during this time
25 period, January 2012.

1 Q Okay. So you used Sin City Realty, LLC to cry
2 this sale?
3 A Yes.
4 Q Did you use -- This document is signed by Matt
5 Mitchell down at the bottom. Did you use Matt Mitchell
6 to cry your sale?
7 A That would be my assumption.
8 Q Okay. At the time of the sale -- And you sold
9 it to the Resources Group, correct?
10 A It looks like it was sold to 4254 Rollingstone
11 Drive Trust.
12 Q Okay. And then who -- Iyad Haddad -- Why is
13 there a cashier's check at A&K60 to Iyad Haddad for
14 \$10,000?
15 A I don't know.
16 Q Did A&K process any refund to him?
17 A I'm sure that if there was a payment made to our
18 office above and beyond the successful bid amount, a
19 refund was processed, yes.
20 Q Are you aware of any relationship -- You said
21 Mr. Kerbow signed your Notice of Sale, correct?
22 A Correct.
23 Q And Mr. Kerbow would have reviewed the mailings
24 prior to the sale being conducted, correct?
25 A Yes.

1 Q Are you aware of any relationship between Mr.
2 Kerbow and Mr. Haddad?
3 A There -- No. There is none.
4 Q Has Mr. Kerbow ever performed legal work for Mr.
5 Haddad?
6 A I don't know. It is -- I believe that we have
7 performed legal work for investors on occasion. I don't
8 know if we have ever performed legal work for Mr. Haddad.
9 We may have. I know he has sued us quite a bit. I don't
10 know if we have ever represented him, but we may have on
11 some small issues.
12 Q Okay. Would you be surprised if I told you that
13 Mr. Haddad indicated that Mr. Kerbow represented him in
14 quiet title actions?
15 A I would not be shocked, no.
16 Q Why?
17 A As I said, we have represented investors in
18 quiet title actions before. It's not completely unusual.
19 We are -- consider ourselves to be experienced in the
20 field. I -- As I testified, I believe that we have
21 represented Mr. Haddad on occasion. I don't believe it
22 was that extensive. So it would not shock me.
23 MS. MIKRUT: Off the record just for a second.
24 (Off the record)
25 MR. BECKOM: We can go back on the record.

1 BY MR. BECKOM:
2 Q So Mr. Kerbow and Mr. Haddad, do you know if
3 they had any kind of attorney/client relationship at the
4 time of this sale?
5 A No. And when you say Mr. Kerbow represented Mr.
6 Haddad, I'm not sure if you mean Mr. Kerbow in his
7 capacity as an attorney for Alessi & Koenig or in a
8 separate capacity.
9 Q Did you know Mr. Kerbow to frequently moonlight?
10 A No. That's just --
11 Q Okay. So are you attempting to testify that
12 Alessi & Koenig at no point in time was retained by Iyad
13 Haddad?
14 A No. As I testified earlier, I believe that we
15 had been retained. I don't know if it was by Iyad
16 Haddad. I don't know if Iyad Haddad is the same as Eddie
17 Haddad, if it's the same person. But I do believe -- It
18 was my recollection, as I testified, that we had
19 represented Eddie on some matters. I don't know which
20 type of matters. You're telling me that we represented
21 him in quiet title action, at least one it appears. That
22 would not shock me.
23 Q When was the first that Alessi & Koenig
24 represented Eddie Haddad?
25 A I don't know.

1 Q Was it before 2013?
2 A I don't know.
3 Q Would it have been before 2012?
4 A I doubt it was before 2012 because my -- It may
5 have been 2011. It would be the earliest that I would
6 think we represented him, but I really have no specific
7 recollection.
8 Q Do you have any recollection about what you
9 represented Mr. Haddad in in 2011?
10 A I don't know that we did represent him in 2011.
11 My testimony would be that that's about as far back as I
12 would think we would have ever represented him. I don't
13 know what it would have been about. It doesn't surprise
14 me if there were -- if he retained us for an action to
15 quiet title. I don't -- I have no specific recollection
16 on what we were retained by Mr. Haddad to do or how often
17 except to say that it wasn't very often.
18 Q Understood. Would you be able to state with any
19 certainty that you had represented -- that Alessi &
20 Koenig had represented Mr. Haddad prior to January 2012?
21 A I wouldn't be able to state one way or another
22 with any certainty.
23 Q Okay. Did Alessi & Koenig represent Mr. Haddad
24 at the time of his HOA sale?
25 A I don't know.

1 Q Is there someone that would know?
2 A Mr. Haddad.
3 Q Okay. A&K number 62, it's another cashier's
4 check paid to the order of Iyad Haddad. Do you know what
5 this is?
6 A No.
7 Q Why did -- Are these cashier's checks coming
8 from your firm or are they coming from somewhere else?
9 A They're coming from our firm. They're Bates
10 stamped with our A&K stamp. So these could have either
11 been checks that were used to pay or checks used to
12 qualify as a bidder. I'm not sure.
13 Q But the sale didn't take place until January
14 25th, 2012, correct?
15 A I believe that's correct, yes.
16 Q And these checks are dated January 31st, 2012,
17 correct?
18 A Yes.
19 Q But hold on. Wait. I think you said you
20 thought that they may be used to qualify Mr. Haddad as a
21 bidder. Would Alessi & Koenig use their own funds to
22 qualify Mr. Haddad as a bidder?
23 A Not our own funds. I'm sorry. Let me see what
24 you're looking at. So investors have cashier's checks
25 made out to themselves that they bring to sales to show

1 what they are -- how much they are qualified to bid up
2 to. That's my understanding. I don't know what this
3 check relates to. Let's see.
4 Q Is this -- Was this issued by Alessi & Koenig?
5 A I don't believe so. I believe this was issued
6 by Haddad. And I think that the investor signs it over
7 to us on the back as payment. So this isn't a check --
8 A&K62 is not a payment from Alessi & Koenig to Haddad.
9 Q But this in no way could have been for this sale
10 because this cashier's check wasn't issued until five
11 days after the sale, correct?
12 A Correct. I don't know if it pertained to this
13 sale or not. \$5,331 was the successful amount.
14 Q Question though. It looks like your firm chose
15 to redact the bank account numbers at A&K number 60.
16 Would you be able to determine if this came from your
17 account or from Mr. Haddad's account if those bank
18 account numbers were unredacted?
19 A No. Just from all of my depositions and my
20 understanding of the business, this would not be a
21 cashier's check generated by our office.
22 Q So Alessi & Koenig doesn't generate cashier's
23 checks?
24 A Correct.
25 Q And why do you know that?

1 A Well, we -- You know, we collect our funds --
2 the funds into the client trust account and we pay the
3 funds out via checks. So normally when I see a cashier's
4 check like this, my inference is that this is a -- these
5 are funds that are used by the investor to purchase the
6 property or to qualify as an investor.
7 Q And you have no explanation then for why there
8 would have been copies of these checks five days after
9 the sale, dated five days after the sale in the file for
10 this property?
11 A No.
12 Q Is there any reason why you have a photocopy of
13 \$460 in cash at A&K61?
14 A My understanding is that would have been part of
15 the payment tendered to purchase the property. So we
16 would have received \$5,331. If we received more than
17 that, due to the increments of the cashier's checks, then
18 the balance would have been -- So my testimony would be
19 that the \$5,000 cashier's check on A&K62 plus the cash
20 shown on A&K61 were the funds used by Mr. Haddad to
21 purchase the property.
22 He may have had larger denominations at the sale
23 and asked us to -- so that he didn't have to wait for a
24 refund, asked us to allow him to pay to change the
25 denominations of the cashier's checks so that he did not

1 have to wait for a refund. I don't know. I don't know.
2 Q I'm looking at -- Let's go forward to A&K number
3 70.
4 A Yes.
5 Q This is another one of your activity screens.
6 What is this?
7 A Well, it appears to be a status report generated
8 subsequent to the sale. And I don't know why it's in
9 this -- in this production. Well, it's the same
10 association. I don't know if this was a subsequent
11 foreclosure activity on the same property against the
12 subsequent owner or if this was mistakenly placed in here
13 and this is for another property.
14 Q It mentions a Chapter 11 bankruptcy on that
15 status screen. Are you familiar with any Chapter 11
16 bankruptcy that was filed involving this property?
17 A Well, you can see that the sale took place
18 January 25, 2012. It looks like -- So this Chapter 11
19 bankruptcy which the status report says was filed July of
20 2012 doesn't appear to have been a bankruptcy that would
21 have affected this foreclosure. I don't know what this
22 document is.
23 Q Let's go forward to A&K85. In your file you
24 included a rather lengthy bankruptcy docket from a
25 Chapter 11 bankruptcy filed by Ryan Alexander. Do you

1 know who Mr. Alexander is?
2 A I believe he is a bankruptcy attorney.
3 Q How do you know Mr. Alexander?
4 A I don't know him. I believe I have met him.
5 Q In what capacity did you meet him?
6 A I believe he is a -- Steve Loizzi is an attorney
7 with our firm, who was a former bankruptcy attorney with
8 Haines & Krieger. I believe Steve knows Ryan from
9 those -- from his prior bankruptcy -- from his prior days
10 as a bankruptcy attorney.
11 Q And that's how you met Mr. Alexander was through
12 Steve Loizzi?
13 A Yes.
14 Q Have you ever retained Mr. Loizzi -- not Mr.
15 Loizzi, Mr. Alexander for any purpose?
16 A I have not, no.
17 Q And you have no I guess understanding or
18 testimony as to why your firm was tracking a Chapter 11
19 bankruptcy filed by the Resources Group on behalf of
20 Oliver Sagebrush Drive Trust? You have no understanding
21 about why your firm was tracking this bankruptcy?
22 A It looks like the entity may have -- It looks
23 like in August 2012 we initiated foreclosure proceedings
24 against Bourne Valley Court Trust. So I don't know if
25 there was a transfer between Rollingsstone Drive Trust and

1 Bourne Valley Trust on this property subject to January
2 2012, but it looks like at some point --
3 Q Did you ever assist in filing Chapter 11
4 bankruptcies for Mr. Haddad in 2012?
5 A No.
6 Q Did you ever provide -- So you would have no
7 knowledge -- You and no one at Alessi & Koenig would have
8 any knowledge of any Chapter 11 bankruptcy in 2012
9 involving Mr. Haddad?
10 A Well, as you can see, we produced these
11 documents that would indicate that we did have knowledge.
12 I don't know who Resources Group, LLC is. But we would
13 have had notice of that bankruptcy. As you can see, we
14 included it in our file.
15 Q Okay. Did you still represent Mr. Haddad or
16 would you have represented Mr. Haddad as of the middle
17 and latter part of 2012?
18 A I don't know. I don't know. We did not
19 represent him, as you can see, on this -- If this was him
20 filing bankruptcy, we would not have represented him in
21 this bankruptcy. I don't know whether we were
22 representing Mr. Haddad on any other matters in 2012.
23 Q Would you be shocked at all if I told you that
24 this entity Resources Group was controlled by Mr. Haddad?
25 A No.

1 Q Would you be shocked at all if I told you that
2 Mr. Haddad placed this entity into bankruptcy in 2012?
3 A No.
4 Q Would you be shocked at all if I told you that
5 Mr. Haddad listed the property subject to the bank's
6 lien?
7 A Would I -- Yeah, I wouldn't --
8 MS. MIKRUT: Objection, calls for speculation,
9 so I object to that extent.
10 THE WITNESS: I don't know that I would be
11 shocked at that.
12 BY MR. BECKOM:
13 Q Why would you not be shocked at that?
14 A I don't -- Why would I? I guess I don't know
15 what -- I'm not a bankruptcy attorney. I don't know what
16 strategies Mr. Haddad was using in the filing of his
17 bankruptcy or why he would list the property subject to
18 the bank mortgage. So -- So I would therefore not be
19 shocked by it since I don't know what his strategy would
20 have been.
21 Q Now, we can agree -- So this sale took place in
22 January 2012.
23 MS. MIKRUT: Which sale?
24 MR. BECKOM: This one, on Rollingsstone Drive,
25 the one we have been -- the foreclosure -- Sorry. I

1 guess he delineated there were two separate foreclosure
2 proceedings.
3 BY MR. BECKOM:
4 Q So the first sale to the Resources Group and to
5 the trust took place in January 2012 I believe; is that
6 correct?
7 A Yes.
8 Q Can we agree that's a pretty old sale for HOA
9 sales?
10 A Yes. January of 2012 would have been right
11 toward the beginning of the three-and-a-half, four-year
12 period of trustee sales. It would have been right toward
13 the beginning.
14 Q Okay. And I think you stated previously that
15 you would not have been surprised at all if Mr. Haddad
16 had stated this property was subject to a lien, correct?
17 MS. MIKRUT: I would just object again. It
18 calls for speculation to testify about that.
19 BY MR. BECKOM:
20 Q You can still answer.
21 A That is correct. I would not be shocked.
22 Q Okay. Did you ever go to any of these HOA sales
23 in January 2012 or was it just Matt Mitchell from Sin
24 City Realty?
25 A We did approximately 850 sales from end of 2011

1 through 2 -- through present. I would -- You know, we
2 did many of them in our conference room. I attended or
3 walked by a few. I have cried a few sales. I have no
4 specific knowledge of this sale. So I don't know -- I
5 doubt that I was there.
6 Q But did you -- But had you attended any sales in
7 let's say fourth quarter 2011, first quarter 2012?
8 A I'm not sure. I do recall one sale. I don't
9 know what year I attended it but that I did want to
10 attend. It involved the sale of 114 parcels at a
11 Southern Highlands master. It was a big deal. And I
12 know I wanted to be there for that one. But in general I
13 did not attend sales.
14 Q When did this sale take place?
15 A I don't remember if it was 2012 or not.
16 Q Was it one of your older sales?
17 A It was quite awhile ago. I would not be shocked
18 or surprised if it was 2012. I wouldn't be surprised if
19 it was 2013 either.
20 MR. BECKOM: Okay. Can we take a break for a
21 second?
22 (Recess taken from 2:33 p.m. through 2:39 p.m.)
23 BY MR. BECKOM:
24 Q All right. So let's go on. It looks like you
25 have some more bankruptcy information, A&K101. It looks

1 like an order submitted to Judge Beesley by McCarthy &
2 Holthus concerning this same bankruptcy.
3 And again, you have no recollection as to why
4 this case would have been dismissed and why you would
5 have been tracking that?
6 A I believe that we were tracking it because we
7 were doing a subsequent foreclosure against this entity,
8 and that is why we would have been tracking it.
9 Q Understood. You have another bankruptcy here at
10 A&K104. It looks like one for Saticoy Bay LLC Series
11 Bowman Lair. Do you have any idea about why you would
12 have been tracking this bankruptcy?
13 A No.
14 Q And I guess just to be clear, your testimony is
15 that Alessi & Koenig had no affiliation with the
16 bankruptcy of Saticoy Bay LLC Series Bowman Lair?
17 A Well, we may have represented the HOA on a claim
18 made, but we had no affiliation with the debtor.
19 Q Okay. And you had no affiliation with Ryan
20 Alexander other than --
21 A Correct.
22 Q -- a casual friendship of one of your employees?
23 A Correct. And the employee wasn't employed in
24 2013 by our office. So I did not meet Ryan Alexander
25 until I believe this year.

1 MS. MIKRUT: I'm going to have to object. I
2 don't think that he ever testified that there was a
3 casual friendship.
4 MR. BECKOM: He just testified. It's his answer
5 now. So he is allowed to answer however he wants. I
6 will speak slower if you want to get your objection on
7 the record.
8 MS. MIKRUT: You can't speak slower.
9 MR. BECKOM: Maybe if you're lucky.
10 BY MR. BECKOM:
11 Q Okay. And then over here it looks like there is
12 another -- A&K116 there is another ledger here that just
13 shows a bunch of -- It looks like it's dated January 9,
14 2014.
15 A Yes.
16 Q Do you have any idea about why you would have a
17 ledger or an auction -- or a ledger as of January 2014?
18 A No.
19 Q Okay. It looks like in the final document that
20 I have here, actually not the final document, is the
21 Declaration of Covenants, Conditions and Restrictions.
22 Have you seen this document before?
23 A I have seen a -- I don't know that I have seen
24 this specific document before, but I have seen documents
25 like this.

1 Q Why would Alessi & Koenig have a copy of this
2 document in their possession?
3 A We oftentimes have copies of the CC&Rs in our
4 possession. Oftentimes we do general counsel work for
5 associations. We don't always have the CC&Rs in the
6 file, but as can you see, we did on this one. I don't
7 know why we would have for this particular file.
8 Q Do you know if you did general counsel work for
9 the HOA?
10 A I do not.
11 Q Okay. Do you review the CC&Rs at all prior to
12 foreclosure?
13 A Sometimes. Most of the CC&Rs are pretty
14 generic. But I believe we do review the CC&Rs. We do
15 review the CC&Rs at times, again, not always.
16 Q Do you have any reason to believe that you had
17 reviewed the CC&Rs of this property prior to selling it
18 in January of 2012?
19 A I don't know.
20 Q Let's go to A&K133.
21 A Yes.
22 Q Section 11 where it says, "Subordination of the
23 lien to mortgages," did your firm review this at all
24 prior to selling the property?
25 A I don't know whether or not we reviewed this

1 specific provision. I can testify that we were aware of
2 these types of provisions.

3 Q You were aware of these types of provisions in
4 January 2012?

5 A Yes. Oftentimes they are called mortgagee
6 protection clauses.

7 Q Did you ever discuss these with any potential
8 purchasers?

9 A No.

10 Q Why?

11 A We just did not discuss these types of things
12 with investors.

13 Q Okay. So you were aware this was there prior to
14 the sale of this property?

15 A I don't know if we were aware that this
16 provision was in this specific CC&Rs on the sale of this
17 specific property. I can testify that we were aware of
18 mortgagee protection clauses within CC&Rs. I just don't
19 have any specific knowledge as to whether or not these
20 were reviewed five years ago.

21 Q Does Alessi & Koenig have a public position as
22 to the effect of a mortgage protection clause on an HOA
23 sale?

24 A That, again, would be a question that I would
25 defer to a court. Our -- My understanding from our

1 did testify to is that to the extent such a clause
2 conflicted with the statutes, if it did conflict with the
3 statutes, then our understanding would be that such a
4 provision would be void.

5 Q So you thought that you were selling these
6 properties subject to a lawsuit?

7 A Subject to a lawsuit?

8 MS. MIKRUT: I just object. That misstate his
9 earlier testimony.

10 THE WITNESS: I don't think we thought in those
11 terms. We were just selling the property pursuant to the
12 rights and duties that the board of directors and the
13 association had as outlined by NRS 116.

14 BY MR. BECKOM:

15 Q I'm confused.

16 A The effect of that sale was something that we
17 leave up to the courts.

18 Q You keep mentioning that, like we're going to
19 leave it up to the courts. We're going to leave it up to
20 the courts. All our sales are going to be left up to the
21 courts. Wouldn't that imply a lawsuit?

22 A No. If -- If there is a lawsuit. This
23 particular case, when we went -- when we went to sale, we
24 did not make any -- we did not offer any warranties to
25 the investors.

1 Nevada counsel is that any provisions contained within
2 the CC&Rs that conflict with the statutes is void. So to
3 the extent a mortgagee protection clause may or may not
4 conflict with the provisions of NRS 116, that provision
5 would be void.

6 Q Was that Alessi & Koenig's public position in
7 the beginning of 2012?

8 A We didn't have a public position. We
9 specifically stayed away from having those types of --
10 making those types of -- taking those types of positions.
11 We would defer to the courts on those types of matters.

12 Q But you were aware of mortgage protection
13 clauses?

14 A Yes.

15 Q And at no point -- And then also your Nevada
16 counsel had advised you that they conflicted with the
17 statute and were void?

18 A No. If they -- No. We didn't take
19 conclusory -- conclusory positions like that.

20 Q Conclusory.

21 A That was -- Thank you. As you know, the
22 investor takes up without warranties the effect of a
23 mortgagee protection clause on the sale. It was not
24 something that we were overly concerned about. That
25 would be a matter that the courts would decide. What I

1 Q But actions -- But like it was not your
2 responsibility to deal with things such as the mortgage
3 protection clause on A&K133 and you were going to leave
4 it up to the courts?

5 A No. I'm leaving that answer up -- You asked me
6 the question. I said I would defer that answer to the
7 courts. At the time of the sales, we did not think in
8 those terms, but we were just selling the properties, as
9 I said, pursuant to the duties and rights that the
10 association had under NRS 116. We didn't go any further
11 in our analysis of the effect of those sales. We were
12 busy selling the properties.

13 Q You know, one thing I found that was noticeably
14 absent from this sale, and this reminds me, is can you
15 show me in here where you published this sale to the
16 public?

17 A This sale -- There was an email to Nevada Legal
18 News. Yes, on A&K141 is the email between our office and
19 Nevada Legal News confirming that the sale was published.

20 Q Okay.

21 A If you were to go to those publications, I'm
22 sure you would find that.

23 Q Okay. Fair enough. We have an email from
24 Marquis Aurbach Coffing on Alessi & Koenig 139. Do you
25 know what that is?

1 A Yes, I saw that. Avece I believe is an HOA
2 attorney. She may have been general counsel for the
3 association at that time. So my guess, it would have
4 something to do with that.
5 Q Okay. Anything else you would like to add to
6 your testimony here today?
7 A No, sir.
8 MR. BECKOM: I believe I have no further
9 questions.
10 MS. MIKRUT: Let me just ask one quick question
11 on the record.
12 EXAMINATION
13 BY MS. MIKRUT:
14 Q Mr. Alessi, my name is Denise Mikrut. I
15 represent Resources Group in this matter.
16 If -- At any point between the time that the
17 Notice of Trustee's Sale was recorded and the trustee's
18 sale actually occurred, if you would have ever been
19 contacted by the lender, would that be reflected in your
20 screenshot notes that you provided?
21 A Yes.
22 Q To your knowledge did the lender or the
23 beneficiary to the Deed of Trust ever contact Alessi &
24 Koenig regarding the delinquency during that time frame?
25 A No.

1 Q To your knowledge did the beneficiary of the
2 Deed of Trust ever send or remit any payment to Alessi &
3 Koenig during that time frame?
4 A No.
5 MS. MIKRUT: All right. That's all I have.
6 Thank you.
7 (Concluded at 2:53 p.m.)
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1 CERTIFICATE OF REPORTER
2
3 STATE OF NEVADA }
4 COUNTY OF CLARK } ss.
5 I, Joanne C. Williams, CCR No. 899, certify as
6 follows:
7 That I reported the taking of the deposition of
8 the witness, DAVID ALESSI, at the time and place
9 aforesaid.
10 That prior to being examined, the witness was by
11 me duly sworn to testify to the truth, the whole truth
12 and nothing but the truth.
13 That I thereafter transcribed my stenographic
14 notes into typewriting and that the transcript of said
15 deposition is a complete, true and accurate transcript of
16 said stenographic notes.
17 That transcript review pursuant to NRCP 30(e)
18 was waived.
19 I further certify that I am not a relative or
20 employee of any party involved in said action, nor a
21 person financially interested in the action.
22 Dated at Las Vegas, Nevada, this 30th day
23 of November, 2016.
24
25 Joanne C. Williams, RPR, CR, CCR No. 899

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EXHIBIT 17

EDWARDS GEORGE R TRUST
4254 ROLLINGSTONE DR

LAS VEGAS, NV 89103

REPUBLIC SERVICES
ACCT# 308
PO BOX 88606
LAS VEGAS, NV 89193-8606

US RECORDINGS
2025 COUNTRY DRIVE STE. 201

ST. PAUL, MN 55117

LAW OFFICE OF AJ KUM, LTD
1020 GARCES AVE, STE 200

LAS VEGAS, NV 89101

ROBERT HAZELL
14883 MAMMOTH PL

FONTANA, CA 92335

7010 1670 0002 4330 7092

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Postage Must Be Paid by Addressee or Sender)

OFFICIAL USE

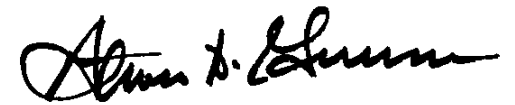
Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Insured Delivery Fee (Endorsement Required)	

EDWARDS GEORGE R TRUST
4254 ROLLINGSTONE DR
LAS VEGAS, NV 89103

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Attorneys for defendant/counterclaimant Resources Group, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

U.S. BANK NATIONAL ASSOCIATION, ND, a
national association

Plaintiff,

vs.

GEORGE R. EDWARDS, an individual; ANY AND
ALL PERSONS UNKNOWN, CLAIMING TO BE
PERSONAL REPRESENTATIVES OF GEORGE
R. EDWARDS ESTATE, OR DULY APPOINTED,
QUALIFIED, AND ACTING EXECUTOR OF THE
WILL OF THE ESTATE OF GEORGE R.
EDWARDS; RESOURCES GROUP, LLC, a Nevada
Limited Liability Company; GLENVIEW WEST
TOWNHOMES ASSOCIATION, a Nevada non-
profit corporation; DOES 4 through inclusive; and
ROES 1 through 10 inclusive

Defendants.

RESOURCES GROUP, LLC,

Counter-claimant

vs

U.S. BANK NATIONAL ASSOCIATION, ND, a
national association

Counter-defendant

CASE NO.: A-12-667690-C
DEPT NO.: XVI

**RESOURCES GROUP, LLC'S
OPPOSITION TO U.S. BANK'S
MOTION FOR SUMMARY
JUDGMENT**

1 Defendant/counterclaimant, Resources Group, LLC, as Trustee for the Bourne Valley Court Trust
2 (hereinafter “Resources Group”), by and through its attorneys, Michael F. Bohn, Esq. and Adam R.
3 Trippiedi, Esq., submits the following points and authorities in response to the motion for summary
4 judgment filed by U.S. Bank National Association ND (hereinafter “plaintiff”) on January 3, 2017.

5 **POINTS AND AUTHORITIES**

6 **FACTS**

7 Resources Group is the owner of the real property commonly known as 4254 Rollingstone Drive,
8 Las Vegas, Nevada (hereinafter “Property”). Resources Group acquired title to the Property from 4524
9 Rolling Stone Dr Trust by a grant, bargain, sale deed recorded with the Clark County Recorder on May
10 29, 2012. A copy of the grant, bargain, sale deed is Exhibit A.

11 4254 Rolling Stone Dr Trust acquired title to the Property by a foreclosure deed recorded with the
12 Clark County Recorder on January 31, 2012. A copy of the foreclosure deed is Exhibit B. The
13 foreclosure deed arises from a delinquency in assessments due from the George R. Edwards Trust
14 (hereinafter “former owner”) to Glenview West Townhomes Association (hereinafter “HOA”), pursuant
15 to NRS Chapter 116.

16 Plaintiff is the beneficiary of a deed of trust that was recorded as an encumbrance against the
17 Property on March 26, 2009. A copy of the deed of trust is Exhibit C.

18 On December 20, 2010, Alessi & Koenig LLC (hereinafter “foreclosure agent”) mailed a prelien
19 letter to the former owner and enclosed a copy of a notice of delinquent assessment (lien) for \$2,330.00.
20 A copy of the letter, notice of lien, and proof of mailing is Exhibit D.

21 On January 4, 2011, the foreclosure agent recorded the notice of lien. A copy of the recorded
22 notice is Exhibit E. As proved by the HOA’s statement of financial transactions for the Property, as of
23 January 4, 2011, the former owner had failed to pay assessments of \$130.00 per month that fell due from
24 January 1, 2010 to December 1, 2010. A copy of the HOA’s statement of financial transactions, dated
25 July 10, 2012, is Exhibit F.

26 On March 29, 2011, the foreclosure agent recorded the notice of default and election to sell. On
27 April 5, 2011, the foreclosure agent mailed copies of the notice to the former owner, to plaintiff, and to
28

1 other interested parties. A copy of the notice of default and proof of mailing is Exhibit G.

2 On October 13, 2011, the foreclosure agent recorded a notice of sale. A copy of the notice of sale
3 is Exhibit H.

4 The foreclosure agent also mailed copies of the notice of sale to the former owner, to plaintiff,
5 and to other interested parties. A copy of the proof of mailing is Exhibit I.

6 The authenticity of the business records attached as Exhibits E through I is verified by the affidavit
7 of custodian of records attached as Exhibit J.

8 As reflected by the recitals in the foreclosure deed, 4254 Rolling Stone Dr Trust appeared at the
9 public auction conducted on January 25, 2012, and entered the high bid of \$5,331.00 to purchase the
10 Property.

11 Legal Argument

12 **A. Plaintiff's Trust Deed has been Extinguished.**

13 In SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 130 Nev., Adv. Op. 75, 334 P.3d 408
14 (2014), the Nevada Supreme Court stated:

15 NRS 116.3116(2) gives an HOA a true superpriority lien, proper foreclosure of which will
16 extinguish a first deed of trust. Because Chapter 116 permits nonjudicial foreclosure of
17 HOA liens, and because SFR's complaint alleges that proper notices were sent and
18 received, we reverse the district court's order of dismissal. In view of this holding, we
vacate the order denying preliminary injunctive relief and remand for further proceedings
consistent with this opinion.

19 334 P.3d at 419.

20 Because the facts in the present case are substantially the same as the facts in SFR Investments
21 Pool 1, LLC v. U.S. Bank, N.A., this Honorable Court should reach the same conclusion that the
22 nonjudicial foreclosure arising from the HOA's super priority lien extinguished the deed of trust held by
23 plaintiff on the date of sale.

24 **B. The majority opinion in Bourne Valley Court Trust v. Wells Fargo Bank, N.A. is not a binding interpretation of Nevada's HOA foreclosure statute.**

25 At page 6 of its motion, plaintiff argues that this court should adopt the ruling by the Ninth Circuit
26 court of appeals in Bourne Valley Court Trust v. Wells Fargo Bank, N.A., 832 F.3d 1154 (9th Cir. 2016),
27
28

1 and find that “NRS § 116.3116 *et seq* is unconstitutional in all respects due to the ‘opt in’ noticing as
2 outlined in the statute.” On the other hand, NRS 116.31168(1) expressly incorporates the notice
3 requirements in NRS 107.090(3)(b) and NRS 107.090(4) that require copies of the notice of default and
4 notice of foreclosure sale to be mailed to every holder of an interest subordinate to the assessment lien
5 being foreclosed.

6 **1. In SFR, the Nevada Supreme Court rejected the due process argument
that was adopted by the majority opinion in Bourne Valley.**

7 In SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 130 Nev., Adv. Op. 75, 334 P.3d 408
8 (2014), the Nevada Supreme Court expressly rejected the lender’s argument that the statutory scheme
9 granting to the HOA its superpriority lien rights violated due process:

10 The contours of U.S. Bank's **due process** argument are protean. **To the extent U.S. Bank**
11 **argues that a statutory scheme that gives an HOA a superpriority lien that can be**
12 **foreclosed nonjudicially, thereby extinguishing an earlier filed deed of trust, offends**
13 **due process, the argument is a nonstarter.** As discussed in 7912 Limbwood Court
14 Trust, 979 F. Supp. 2d at 1152'.

15 Chapter 116 was enacted in 1991, and thus [the lender] was on notice that
16 by operation of the statute, the [earlier recorded] CC & Rs might entitle
17 the HOA to a super priority lien at some future date which would take
18 priority over a [later recorded] first deed of trust.... **Consequently, the**
19 **conclusion that foreclosure on an HOA super priority lien**
20 **extinguishes all junior liens, including a first deed of trust recorded**
21 **prior to a notice of delinquent assessments, does not violate [the**
22 **lender's] due process rights.**

23 *Accord* Nationstar Mtg., 2014 WL 3661398, at *3 (rejecting a due process
24 challenge to nonjudicial foreclosure of a superpriority lien). (emphasis added)
25 334 P.3d at 418.

26 In Nationstar Mortgage, LLC v. Rob and Robbie, LLC, 2014 WL 3661398 (D. Nev. July 23,
27 2014), the court stated:

28 The Court rejects Plaintiff's due process arguments. The fact that Nevada has a race-notice
recording statute is no rebuttal to the argument that the HOA foreclosure statutes permit
an HOA foreclosure to extinguish a mortgage that was recorded after the CC & R
permitting HOA liens but after a particular HOA lien itself. As the Court has noted in
ruling that HOA foreclosures do not extinguish first mortgages, **the State of Nevada may**
structure its foreclosure and recording statutes as it sees fit. That is true whatever the
proper interpretation of the statutes. **The statutes governing HOA foreclosures were in**
place when Plaintiff gave the mortgage at issue. The recording statute provides a
general statutory exception to the first-in-time, first-in-right rule provided by the common
law. That is, under the recording statute, a person who records his deed may have priority

1 over another party who received a competing interest in the same property before the
2 recording party received his interest. **The HOA foreclosure statutes provide that**
3 **certain HOA liens are prior even to first mortgages so long as the CC & R**
4 **permitting foreclosure are recorded before the first mortgage. The recordation of the**
5 **CC & R puts a potential mortgagee on notice of the risk of a future HOA**
6 **foreclosure.** Plaintiff has long been on notice of the statutory scheme that would permit
7 its mortgage to potentially be extinguished by an HOA lien in some circumstances, and
8 it has been able to protect itself by periodically checking the postings at the front entrance
9 of the Washoe County Courthouse or the electronic records available online for free.
10 Plaintiff was on constructive notice of the CC & R permitting an HOA foreclosure
11 (recorded before the first mortgage), the notice of HOA lien, and the notice of sale. **The**
12 **fact that Plaintiff gave its mortgage at a time when no actual lien had been placed**
13 **against the Property does not matter. It is notice of the possibility of an action**
14 **against the security by a senior party that matters..** (emphasis added)

15 Id. at *3.

16 The Nevada Supreme Court therefore rejected the exact due process argument that was adopted
17 by the majority opinion in Bourne Valley. The misinterpretation of Nevada law by the majority opinion
18 in Bourne Valley is not a binding interpretation of the statute.

19 **2. Only the Nevada Supreme Court can authoritatively construe NRS Chapter 116.**

20 In California Teachers Association v. State Board of Education, 271 F.3d 1141 (9th Cir. 2001),
21 the court identified the following limits on a federal court's power to interpret state law:

22 We recognize that it is **solely within the province of the state courts to authoritatively**
23 **construe state legislation.** See United States v. Thirty-Seven (37) Photographs, 402 U.S.
24 363, 369, 91 S. Ct. 1400, 28 L. Ed. 2d 822 (1971). Nor are we authorized to rewrite the
25 law so it will pass constitutional muster. Virginia v. American Booksellers Ass'n, Inc.,
26 484 U.S. 383, 397, 108 S. Ct. 636, 98 L. Ed. 2d 782 (1988). A federal court's duty, when
27 faced with a constitutional challenge such as this one, is to employ traditional tools of
28 statutory construction to determine the statute's "allowable meaning." Grayned v. City of
Rockford, 408 U.S. 104, 110, 92 S. Ct. 2294, 33 L.Ed.2d 222 (1972); Stoianoff v.
Montana, 695 F.2d 1214, 1218 (9th Cir.1983). In doing so, **we look to the words of the**
statute itself as well as state court interpretations of the same or similar statutes.
Grayned, 408 U.S. at 109–10, 92 S. Ct. 2294. Moreover, before invalidating a state statute
on its face, a federal court **must determine whether the statute is "readily susceptible"**
to a narrowing construction by the state courts. American Booksellers, 484 U.S. at
397, 108 S. Ct. 636; Nunez v. City of San Diego, 114 F.3d 935, 942 (9th Cir.1997).
(emphasis added)

271 F.3d at 1146-1147.

In Arizonans for Official English v. Arizona, 520 U.S. 43, 48 (1997), the Supreme Court stated:

Federal courts lack competence to rule definitively on the meaning of state legislation,
see, e.g., Reetz v. Bozanich, 397 U.S. 82, 86-87 (1970), nor may they adjudicate
challenges to state measures absent a showing of actual impact on the challenger, see, e.g.,
Golden v. Zwickler, 394 U.S. 103, 110 (1969).

1 In United States ex rel. Lawrence v. Woods, 432 F.2d 1072, 1075 (7th Cir. 1970), the court stated:

2 The United States Supreme Court has final appellate jurisdiction over federal questions
3 arising either in state or federal proceedings, and by reason of the supremacy clause the
4 decisions of that court on national law have binding effect on all lower courts whether
5 state or federal.

6 In Bromley v. Crisp, 561 F.2d 1351, 1354 (10th Cir. 1977), cert. denied, 435 U.S. 908 (1978), the
7 court stated that “the Oklahoma Courts may express their differing views on the retroactivity problem **or**
8 **similar federal questions** until we are all guided by a binding decision of the Supreme Court.”
9 (emphasis added)

10 In Arizonans for Official English v. Arizona, 520 U.S. 43, 77 (1997), the Supreme Court stated
11 that “[a] more cautious approach was in order” and that “[t]hrough certification of novel or unsettled
12 questions of state law for authoritative answers by a State’s highest court, a federal court may save ‘time,
13 energy, and resources and hel[p] build a cooperative judicial federalism.’”

14 The court in Bourne Valley failed to follow this direction by the United States Supreme Court in
15 adopting an interpretation of the statute contrary to the interpretation adopted by the Nevada Supreme
16 Court in SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 130 Nev., Adv. Op. 75, 334 P.3d 408 (2014).

17 **3. The HOA foreclosure sale could not violate due process because the statute**
18 **expressly incorporates the mandatory notices required by NRS 107.090.**

19 In SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 130 Nev., Adv. Op. 75, 334 P.3d 408
20 (2014), the Nevada Supreme Court stated:

21 **In view of the fact that the “requirements of law” include compliance with NRS**
22 **116.31162 through NRS 116.31168 and by incorporation, NRS 107.090, see NRS**
23 **116.31168(1), we conclude that U.S. Bank's due process challenge to the lack of adequate**
24 **notice fails, at least at this early stage in the proceeding. (emphasis added)**

25 334 P.3d at 418.

26 As provided by State v. Steven Daniel P. (In re Steven Daniel P.), 129 Nev., Adv. Op. 73, 309
27 P.3d 1041, 1046 (2013), the provisions of NRS 107.090 must be read as if they were “incorporated
28 bodily” into NRS Chapter 116.

The majority opinion in Bourne Valley refused to apply the Nevada Supreme Court’s
constitutional interpretation of the statute because it found that incorporating the mandatory notices

1 provided to holders of subordinate interests required by NRS 107.090(3)(b) and NRS 107.090(4) would
2 make the request for notice provisions in NRS 116.31163 and NRS 116.311635 “superfluous” and
3 “meaningless.”

4 On the other hand, the mandatory notices in NRS 107.090(3)(b) and NRS 107.090(4) are only
5 mailed to holders of interests **subordinate** to the association’s lien. The request for notice provisions in
6 NRS 116.31163 and NRS 116.311635 may be used by **any** holder of a recorded interest. Because more
7 persons qualify to use the request for notice provisions than are required to receive notice under NRS
8 107.090(3)(b) and NRS 107.090(4), the mandatory notice provisions do not make the request for notice
9 provisions “superfluous” or “meaningless.”

10 Due process, even if it applies, would not necessarily require notice to a senior lienholder whose
11 interest would not be affected by the sale. NRS 116.31163 and NRS 116.311635 provide senior
12 lienholders with a method to request that copies of the notice of default and notice of sale be mailed to
13 the address that each desires. The request for notice provisions also give “shadow owners” a method to
14 request notice when MERS is the named beneficiary identified in a deed of trust.

15 NRS 107.090 contains both a request for notice provision in NRS 107.090(2) and the mandatory
16 notice provisions in NRS 107.090(3)(b) and NRS 107.090(4) for holders of interests “subordinate” to the
17 deed of trust being foreclosed. If the analysis in Bourne Valley was correct, then every nonjudicial
18 foreclosure of a deed of trust in Nevada would also be unconstitutional because the mandatory notice
19 provision in NRS 107.090(3)(b) would make the request for notice provision in NRS 107.090(2)
20 superfluous.

21 **4. Due process does not apply to a nonjudicial foreclosure sale.**

22 The majority opinion in Bourne Valley also failed to recognize that the United States Supreme
23 Court requires that a “state actor” participate before due process must be provided.

24 In section A of the Bourne Valley opinion, the majority relied on three cases that involved judicial
25 remedies. Mennonite Bd. of Missions v. Adams, 462 U.S. 791 (1983), involved a tax sale conducted by
26 the county treasurer. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950), involved the
27 notices provided for “judicial settlement of accounts by the trustee of a common trust fund established

1 under the New York Banking Law, Consol. Laws, c. 2.” Id. at 307. Small Engine Shop, Inc. v. Cascio,
2 878 F.2d 883 (5th Cir. 1989), involved a petition for foreclosure based on a confession of judgment that
3 waived the right to a routine adversary hearing and resulted in a sheriff’s sale conducted pursuant to a writ
4 of seizure and sale issued by the court. The court of appeals in Small Engine Shop, Inc. v. Cascio did not
5 hold that the statute was unconstitutional; it instead adopted a different interpretation of the statute than
6 the one used by the district court. Id. at 893.

7 Unlike the cases cited by the majority opinion in Bourne Valley, no “state actor” participates in
8 the nonjudicial foreclosure of an HOA lien. Furthermore, because NRS 107.090(3)(b) and NRS
9 107.090(4), as incorporated by NRS 116.31168(1), require that copies of the notice of default and the
10 notice of foreclosure sale be mailed to holders of interests subordinate to the HOA’s lien even if they do
11 not record or mail to the HOA a request for notice, Nevada’s statute is different from any of the statutes
12 in the cases cited by the majority opinion and by plaintiff.

13 **5. The Legislature’s enactment of NRS Chapter 116 does not constitute “state
14 action” for due process purposes.**

15 The decisions by the United States Supreme Court in Lugar v. Edmondson Oil Co., Inc., 475 U.S.
16 922 (1982), and Flagg Bros., Inc. v. Brooks, 436 U.S. 149 (1978), hold that due process is not an issue
17 unless a “state actor” participates in the challenged procedure.

18 In Lugar v. Edmondson Oil Co., Inc., the Supreme Court analyzed its decision in Flagg Bros., Inc.
19 v. Brooks and stated:

20 Plaintiffs’ case foundered on the first requirement. Because a due process violation was
21 alleged and **because the Due Process Clause protects individuals only from**
22 **governmental and not from private action**, plaintiffs had to demonstrate that the sale
23 of their goods was accomplished by state action. The Court concluded that **the sale,**
24 **although authorized by state law, did not amount to state action** under the Fourteenth
25 Amendment, and therefore set aside the Court of Appeals’ contrary judgment. (emphasis
26 added)

27 475 U.S. at 930.

28 The Supreme Court also explained why the state’s enactment of a statute did not make a private
party using the statutory remedy a “state actor”:

Second, the party charged with the deprivation must be a person who may fairly be said
to be a state actor. This may be because he is a state official, because he has acted

1 together with or has obtained significant aid from state officials, or because his conduct
2 is otherwise chargeable to the State. **Without a limit such as this, private parties could**
3 **face constitutional litigation whenever they seek to rely on some state rule governing**
4 **their interactions with the community surrounding them.** (emphasis added)

5 475 U.S. at 937.

6 In Charmicor v. Deaner, 572 F.2d 694 (9th Cir. 1978), the court found that the statutory source
7 of the power of sale in NRS 107.080 did not transform the private foreclosure into state action for due
8 process purposes:

9 Thus, the California statute confirms a contractual right; **the Nevada statute confers a**
10 **power of sale upon the trustee.**

11 **The statutory source of the Nevada power of sale, however, does not necessarily**
12 **transform a private, nonjudicial foreclosure into state action.** As this court said in
13 Melara v. Kennedy, 541 F.2d 802, 806 (9th Cir. 1976): "Further, the statute creates only
14 the right to act; it does not require that such action be taken."

15 Other recent cases which hold that the source of the right is not conclusive as to state
16 action include Adams v. Southern California First National Bank, 492 F.2d 324, 330 (9th
17 Cir. 1973), cert. denied, 419 U.S. 1006, 95 S.Ct. 325, 42 L.Ed.2d 282 (1974), and Kenly
18 v. Miracle Properties, 412 F.Supp. 1072, 1075 (D.Ariz.1976).(emphasis added)

19 572 F.2d at 695-696.

20 In Melara v. Kennedy, 541 F.2d 802 (9th Cir. 1976), the court rejected the plaintiff's argument
21 that state action existed because "the statute is the only source of the extra-judicial sale remedy" provided
22 by Cal. Commercial Code § 7210. The court stated that "the statute creates only the right to act; it does
23 not require that such action be taken." Id.

24 In Bourne Valley, the court of appeals incorrectly found that the "state action" requirement was
25 satisfied by the enactment of the HOA foreclosure statute:

26 But that the foreclosure sale itself is a private action is irrelevant to Wells Fargo's due
27 process argument. Rather than complaining about the foreclosure specifically, **Wells**
28 **Fargo contends -- and we agree -- that the enactment of the Statute**
unconstitutionally degraded its interest in the Property. **Absent operation of the**
foreclosure by a homeowners' association would not have extinguished Wells Fargo's
interest. But with the Statute in place, Wells Fargo's interest was not secured. Instead, if
a homeowners' association foreclosed on a lien for unpaid dues, Wells Fargo would forfeit
all of its rights in the Property. In our view, the "state action" requirement is satisfied.
(emphasis added)

832 F.3d at 1160.

1 As noted above, the controlling authority in Lugar v. Edmondson Oil Co., Inc. provides that the
2 enactment of the statutory remedy cannot transform a private party using the statutory remedy into a “state
3 actor.”

4 In the present case, the notice of delinquent assessment (lien) recorded on January 4, 2011
5 (Exhibit E attached) stated that the assessment lien was recorded “[i]n accordance with Nevada Revised
6 Statutes and the Association’s Declaration of Covenants, Conditions and Restrictions (CC&Rs) of the
7 official records of **Clark** County, Nevada” A copy of the CC&Rs recorded on December 12, 1983
8 in Book 1845 as Instrument 1804064 is Exhibit K.

9 Because the CC&Rs were recorded prior to the adoption of the UCIOA in Nevada in 1991, the
10 CC&Rs do not expressly refer to the rights held by the HOA pursuant to NRS Chapter 116. NRS
11 116.1206(1) provides:

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

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

15 (b) Is superseded by the provisions of this chapter, regardless of whether the provision
16 contained in the declaration, bylaw or other governing document became effective before
the enactment of the provision of this chapter that is being violated. (emphasis added)

17 As a result, the CC&Rs recorded in 1983 are “deemed to conform” with the provisions of NRS
18 116.3116 “by operation of law,” including the provisions in NRS 116.3116(2) defining the HOA’s
19 superpriority lien rights.

20 As recognized by the Nevada Supreme Court in SFR Investments Pool 1, LLC v. U.S. Bank, N.A.,
21 130 Nev., Adv. Op. 75, 334 P.3d 408, 419 (2014), NRS 116.1104 prevents that language in Article VI,
22 Section 11 of the CC&Rs from varying or waiving the HOA’s superpriority lien rights under NRS
23 116.3116(2).

24 At the time that plaintiff’s deed of trust was recorded on March 26, 2009, NRS 116.3116(5)
25 stated:

26 Recording of the declaration constitutes record notice and perfection of the lien.
27 No recordation of any claim of lien for assessment under this section is required.

1 As recognized by the Nevada Supreme Court in SFR Investments Pool 1, LLC v. U.S. Bank, N.A.,
2 the CC&Rs recorded on December 12, 1983 and the statute enacted in 1991 provided plaintiff with notice
3 that its deed of trust was subordinate to the HOA's superpriority lien rights.

4 As noted at pages 5 and 6 above, it is "solely within the province of the state courts to
5 authoritatively construe state legislation." United States v. Thirty-Seven (37) Photographs, 402 U.S. 363,
6 369 (1971). In addition, "[f]ederal courts lack competence to rule definitively on the meaning of state
7 legislation." Arizonans for Official English v. Arizona, 520 U.S. 43, 48 (1997). As a result, this court
8 is not bound by the incorrect interpretation of the statute by the majority opinion in Bourne Valley. This
9 court is instead bound by the constitutional interpretation of the statute by the Nevada Supreme Court.

10 On December 13, 2016, the Nevada Legislature filed a motion for leave for late filing of amicus
11 curiae brief before the Nevada Supreme Court in Navy Federal Credit Union v. Saticoy Bay LLC Series
12 1916 Summer Point, Case No. 69308. This brief specifically addresses the Bourne Valley decision.
13 Copies of the motion and the proposed amicus curiae brief are attached as Exhibit L. As noted in the
14 Nevada Legislature's motion, the same amicus brief was filed with the Nevada Supreme Court in HSBC
15 Bank USA v. SFR Investments Pool 1, Case No. 69437, on December 13, 2016.

16 **6. Even if this court agrees with the Bourne Valley decision that the version**
17 **of the statute adopted in 1993 violates due process, the return doctrine**
18 **requires that the court apply the version of the statute adopted in 1991.**

19 Under the Return Doctrine, "when a statute is declared unconstitutional, it has no effect and the
20 prior governing statute is revived." We the People Nev. ex rel. Angle v. Miller, 124 Nev. 874, 192 P.3d
21 1166, 1176 (2008)(citing Chicago, Ind. & L. Ry. Co. v. Hackett, 228 U.S. 599, 566 (1913)). Similarly,
22 in Finger v. State, 117 Nev. 548, 27 P.3d 66, 84 (2001), the court stated: "All prior versions of the statutes
23 amended or repealed by S.B. 314 remain in full force and effect." In Clark County Board of County
24 Comm'r v. City of Las Vegas, 97 Nev. 260, 628 P.2d 1120, 1123 (1981), the court stated: "Because these
25 specifications in the plan for apportionment of expenses, as amended, are unconstitutional, the law as it
26 existed prior to the amendments will be controlling." In Johnson v. Goldman, 94 Nev. 6, 575 P.2d 929,
27 930 (1978), the court stated "[b]ecause 1977 Nev. Stats. ch. 398, §2 (codified as NRS 1.240) is
28 unconstitutional, the procedures which previously governed judicial recusal by affidavit . . . and which

1 were purportedly repealed by 1977 Nev. Stats. ch. 398 remain in effect.”

2 The court of appeals for the Ninth Circuit has also recognized that it is a “fundamental principle
3 of statutory construction that ‘a void act cannot operate to repeal a valid existing statute . . .’” United
4 States v. Tufti, 542 F.2d 1046, 1047 (9th Cir. 1976).

5 In Frost v. Corp. Comm’n of Oklahoma, 278 U.S. 515, 526 (1929), the United States Supreme
6 Court stated: “But since the amendment is void for unconstitutionality, it cannot be given that effect,
7 ‘because an existing statute cannot be recalled or restricted by anything short of a constitutional
8 enactment.’”

9 The court in Bourne Valley found that if NRS 116.31168(1) is interpreted to incorporate the
10 mandatory notice requirements in NRS 107.090(3)(b) and NRS 107.090(4), it renders the notice
11 provisions in NRS 116.31163 and NRS 116.31165 [actually, NRS 116.311635] “entirely superfluous.”
12 Prior to the 1993 amendment to NRS Chapter 116, the provisions in NRS 116.31163 and NRS
13 116.311635 did not exist. In addition, NRS 116.31168(1) included three sentences:

14 The provisions of NRS 107.090 apply to the foreclosure of an association’s lien as if a
15 deed of trust were being foreclosed. The request must identify the lien by stating the
16 names of the unit’s owner and the common-interest community. **The association must
also give reasonable notice of its intent to foreclose to all holders of liens in the unit
who are known to it.** (emphasis added)

17 Under this version of the statute, the foreclosing HOA was required to provide notice to every
18 holder of a lien against a property even if its lien was prior to the HOA lien being foreclosed. This
19 mandatory notice requirement in the 1991 version of the statute could not make the request for notice
20 provisions in NRS 116.31163 and NRS 116.311635 “superfluous” because those sections of the statute
21 did not exist.

22 Consequently, even if this court agrees that the 1993 amendment to NRS Chapter 116 created a
23 due process problem, the Return Doctrine requires that the court apply the 1991 version of the statute,
24 which did not include the “opt-in” notice scheme condemned by the majority in Bourne Valley.

25 **C. Resources Group is protected as the grantee of a bona fide purchaser.**

26 Plaintiff has identified no evidence that would have put 4254 Rolling Stone Dr Trust on notice
27 of any basis for plaintiff to dispute the extinguishment of its subordinate deed of trust. 4254 Rolling
28

1 Stone Dr Trust therefore qualifies as a bona fide purchaser for value.

2 Shadow Wood Homeowners Association v. New York Community Bancorp, Inc., 132 Nev. Adv.
3 Op 5, 366 P.3d 1105 (2016) (hereinafter “Shadow Wood”), discusses bona fide purchaser status in detail.

4 The many points contained in the decision can be summarized as:

- 5 1. A bona fide purchase is without notice of any **prior equity**.
- 6 2. “The decisions are uniform” that the title of a bona fide purchaser is not affected by any matter
7 of which he has no notice, actual or constructive.
- 8 3. The bona fide purchaser must pay **valuable** consideration, not “adequate” consideration.
- 9 4. The fact that the foreclosure price may be “low” is not sufficient to put the purchaser on notice
10 of any alleged defects with the sale.
- 11 5. The fact that the court retains equitable power to void the sale does not deprive the purchaser
12 of bona fide purchaser status.
- 13 6. The time to determine the status of bona fide purchaser is at the time of the sale.

14 In Shadow Wood, the court concluded its discussion regarding Gogo Way’s status as a bona fide
15 purchaser by stating:

16 And NYCB points to no other evidence indicating that Gogo Way had notice before it
17 purchased the property, either actual, constructive, or inquiry, as to NYCB's attempts to
18 pay the lien and prevent the sale, or that Gogo Way knew or should have known that
19 Shadow Wood claimed more in its lien than it actually was owed, especially where the
20 record prevents us from determining whether that is true. ***Lennartz v. Quilty*, 191 Ill. 174,**
21 **60 N.E. 913, 914 (Ill.1901) (finding a purchaser for value protected under the**
22 **common law who took the property without record or other notice of an infirmity**
23 **with the discharge of a previous lien on the property).** Because the evidence does not
24 show Gogo Way had any notice of the pre-sale dispute between NYCB and Shadow
25 Wood, the potential harm to Gogo Way must be taken into account and further defeats
26 NYCB's entitlement to judgment as a matter of law.

27 366 P.3d at 1116 (emphasis added)

28 In the present case, plaintiff has likewise failed to identify any fact, recorded document or other
evidence showing that plaintiff held a latent equity in the Property of which 4254 Rolling Stone Dr Trust
knew or should have known.

As the grantee of a bona fide purchaser, Resources Group enjoys the same protections as 4254
Rolling Stone Dr Trust. “[A] title or lien held by a bona fide purchaser or encumbrancer can be conveyed

1 to a grantee or assignee free and clear of a prior unknown interest even if the grantee or assignee does not
2 fulfill the requirements of a bona fide purchaser or encumbrancer.” 5 Miller & Starr, Cal. Real Est. §
3 11:58 (3d ed.) (citing Jones v. Independent Title Co., 23 Cal. 2d 859 (1944)).

4 **D. Plaintiff is not entitled to equitable relief against Resources Group.**

5 At page 7 of plaintiff’s motion, plaintiff states that “U.S. Bank humbly comes to this Court, sitting
6 in Equity, for assistance.” Under both the Restatement and Nevada law, plaintiff is not entitled to
7 equitable relief against Resources Group because any damages which the plaintiff may have sustained
8 as a result of an alleged wrongful foreclosure can be compensated with money damages.

9 The decision in Shadow Wood has limited application because Shadow Wood dealt with title
10 divestment of the former owner. The present case, however, deals with the extinguishment of plaintiff’s
11 security interest in the Property.

12 In Shadow Wood, the Supreme Court referred to the Restatement (Third) of Prop.: Mortgages
13 § 8.3. Comment b to section 8.3 recognizes that where a property has been purchased by a bona fide
14 purchaser, “the real estate is unavailable” and that “price inadequacy” may be raised in a suit against the
15 foreclosing mortgagee for damages:

16 On the other hand, where foreclosure is by power of sale, judicial confirmation of the sale
17 is usually not required and the issue of price inadequacy will therefore arise only if the
18 party attacking the sale files an independent judicial action. Typically this will be an
19 action to set aside the sale; it may be brought by the mortgagor, junior lienholders, or the
20 holders of other junior interests who are prejudiced by the sale. **If the real estate is**
21 **unavailable because title has been acquired by a bona fide purchaser,** the issues of
22 price inadequacy may be raised by the mortgagor or a junior interest holder in a suit
23 against the foreclosing mortgagee for damages for wrongful foreclosure. **This latter**
24 **remedy, however, is not available based on gross price inadequacy alone.** In addition,
25 the mortgagee must be responsible for a defect in the foreclosure process of the type
26 described in Comment c of this section. (emphasis added)

27 A copy of Section 8.3 from the Restatement is Exhibit M.

28 This authority from the Restatement is consistent with Nevada law and the common law rule that
there is no equity jurisdiction when a party has available to itself an adequate remedy at law.

In 1868, in Sherman v. Clark, 4 Nev. 138, 141 (1868), the Nevada Supreme Court stated:

The writ is exclusively an equitable remedy. But equity is chary of its powers; it employs
them only when the impotent or tardy process of the law does not afford that complete and
perfect remedy or protection which the individual may be justly entitled to. **When**

1 **therefore it is shown that there is a complete and adequate remedy at law, equity will**
2 **afford no assistance.** “When a party has a remedy at law,” says Mr. Hilliard, “he cannot
3 come into equity, unless from circumstances not within his control he could not avail
4 himself of his legal remedy.” (Hill. Inj. sec. 23.) That full compensation can be had at law
5 is the great rule for withholding the strong arm of the chancellor,” says Mr. Justice
6 Thompson, in *Pusey v. Wright*, (31 Penn. 396.) See also *Thompson v. Matthews* (2 Edw.
7 Ch. R. 213; 9 Page, 323.) **Before refusing its aid upon this ground, however, it must**
8 **appear that the legal remedy is complete and adequate to afford the complainant full**
9 **redress; but when that fact does appear, equity at once relinquishes all control over**
10 **the case, and leaves the party to pursue his legal remedy.** (Emphasis added)

11 The same rule was applied by the Nevada Supreme Court in *State v. Second Judicial District*
12 *Court* 49 Nev. 145, 241 P.317, 321-322, 43 A.L.R. 1331 (1925); *Turley v. Thomas*, 31 Nev. 181, 101 P.
13 568 (1909); and *Conley v. Chedic*, 6 Nev. 222, 224 (1870).

14 In *County of Washoe v. City of Reno* 77 Nev. 152, 360 P.2d 602, 604 (1961), the court held that
15 whether or not the judgment is collectable is not an issue to be considered. The court stated:

16 During oral argument, counsel for respondents suggested that an action at law would not
17 be adequate because it could not be enforced by a writ of execution against a county fund.
18 Whether this be true or not, it is hardly to be supposed that an execution would be
19 necessary in the event a judgment at law were obtained against the county in this type of
20 case any more than a contempt proceeding would be required in the event a peremptory
21 writ of mandamus were issued. **In answer to this suggestion however it is necessary to**
22 **say only that our concern is with the existence of a remedy and not whether it will**
23 **be unproductive in this particular case,** *Hughes v. Newcastle Mutual Insurance Co.*, 13
24 U.C.Q.B. (Ont.) 153, or inconvenient, *Gulf Research & Development Co. v. Harrison*, 9
25 Cir., 185 F.2d 457, or ineffectual, *United States ex rel. Crawford v. Addison*, 22 How.
26 174, 63 U.S. 174, 16 L.Ed. 304.

27 In *Stewart v. Manget*, 132 Fla. 498, 181 So. 370, in affirming an order dismissing a bill
28 in equity on the ground that the plaintiff had an adequate remedy at law, the Florida
Supreme Court cited with approval the following language from *Tampa & G. C. R. Co.*
v. Mulhern, 73 Fla. 146, 74 So. 297, 299:

‘The inadequacy of a remedy at law to produce money is not the test of the
applicability of the rule. **All remedies, whether at law or in equity,**
frequently fail to do that; and to make that the test of equity
jurisdiction would be substituting the result of a proceeding for the
proceeding which is invoked to produce the result. The true test is,
could a judgment be obtained in a proceeding at law, and not, would
the judgment procure pecuniary compensation.’

(Emphasis added)

In *Shadow Wood*, the court stated:

A subsequent purchaser is bona fide under common-law principles if it takes the property
“for a valuable consideration and without notice of the prior equity, and without notice
of facts which upon diligent inquiry would be indicated and from which notice would be

1 imputed to him, if he failed to make such inquiry.” *Bailey v. Butner*, 64 Nev. 1, 19, 176
2 P.2d 226, 234 (1947) (emphasis omitted); *see also Moore v. De Bernardi*, 47 Nev. 33, 54,
3 220 P. 544, 547 (1923) (“**The decisions are uniform that the bona fide purchaser of
4 a legal title is not affected by any latent equity founded either on a trust,
5 [e]ncumbrance, or otherwise, of which he has no notice, actual or constructive.**”).
6 Although, as mentioned, NYCB might believe that Gogo Way purchased the property for
7 an amount lower than the property's actual worth, that Gogo Way paid “valuable
8 consideration” cannot be contested. *Fair v. Howard*, 6 Nev. 304, 308 (1871) (“The
9 question is not whether the consideration is adequate, but whether it is valuable.”); *see*
10 *also Poole v. Watts*, 139 Wash.App. 1018 (2007) (unpublished disposition) (**stating that
11 the fact that the foreclosure sale purchaser purchased the property for a “low price”
12 did not in itself put the purchaser on notice that anything was amiss with the sale.**
13 (emphasis added)

14 366 P.3d at 1115-1116.

15 Also noted in comment b to the Restatement, any claim the plaintiff may have is not against
16 Resources Group, but is against the foreclosure agent.

17 In *Moeller v. Lien*, 25 Cal. App. 4th 822, 30 Cal. Rptr. 2d 777 (1994), the respondent allowed
18 a trustee’s sale to go forward even though it had available cash deposits to pay off the loan. *Id.* at 828.
19 The trial court set aside the sale because “[t]he value of the property was four times the amount of the
20 debt/sales price.” *Id.* at 829. The court of appeals reversed the trial court’s order and stated:

21 Thus **as a general rule, a trustor has no right to set aside a trustee’s deed as against
22 a bona fide purchaser for value by attacking the validity of the sale.** (*Homestead
23 Savings v. Damiento*, supra, 230 Cal. App. 3d at p. 436.) The conclusive presumption
24 precludes an attack by the trustor on a trustee’s sale to a bona fide purchaser **even though
25 there may have been a failure to comply with some required procedure which
26 deprived the trustor of his right of reinstatement or redemption.** (4 Miller & Starr,
27 supra, § 9:141, p. 463; cf. *Homestead v. Damiento*, supra, 230 Cal. App. 3d at p. 436.)
28 The conclusive presumption precludes an attack by the trustor on the trustee’s sale to a
bona fide purchaser even where the trustee wrongfully rejected a proper tender of
reinstatement by the trustor. **Where the trustor is precluded from suing to set aside
the foreclosure sale, the trustor may recover damages from the trustee.** (*Munger v.
Moore* (1970) 11 Cal. App. 3d 1, 9, 11 [89 Cal. Rptr. 323].)

Id. at 831-832. (emphasis added)

At the time of the HOA foreclosure sale, NRS 116.31166(1) provided that the recitals in the
foreclosure deed were “conclusive proof” of default, mailing of the notice of delinquent assessment,
recording of the notice of default, the elapsing of the 90 days, and the giving of notice of sale. The
foreclosure deed (Exhibit B) includes each of the required recitals. NRS 116.31166(2) provided that

1 “[s]uch a deed containing those recitals is conclusive against the unit’s former owner, his or her heirs and
2 assigns, and all other persons.”

3 At page 8 of its motion, plaintiff quotes the Nevada Supreme Court’s statement in Shadow Wood
4 that “in an appropriate case, a court can grant equitable relief from a defective HOA lien foreclosure
5 sale.” 366 P.3d at 1107. Later in the opinion, the Nevada Supreme Court reviewed the conclusive recital
6 language found in NRS 116.31166 and stated that “such recitals are ‘conclusive, in the absence of
7 grounds for equitable relief.’” 366 P.3d at 1112 (quoting Holland v. Pendleton Mortg. Co., 61 Cal. App.
8 2d 570, 143 P.2d 493, 496 (Cal. Ct. App.1943)). (emphasis in original) Because the foreclosure deed
9 contains each of the recitals required by NRS 116.31166, it is plaintiff’s burden to prove that it is entitled
10 to equitable relief from the “conclusive” foreclosure deed.

11 In Shadow Wood, the court also stated:

12 Consideration of harm to potentially innocent third parties is especially pertinent here
13 **where NYCB did not use the legal remedies available to it to prevent the property**
14 **from being sold to a third party, such as by seeking a temporary restraining order**
15 **and preliminary injunction and filing a lis pendens on the property.** See NRS 14.010;
16 NRS 40.060. Cf. Barkley's Appeal, Bentley's Estate, 2 Monag. 274, 277 (Pa.1888) (“In the
17 case before us, we can see no way of giving the petitioner the equitable relief she asks
18 without doing great injustice to other innocent parties who would not have been in a
19 position to be injured by such a decree as she asks if she had applied for relief at an earlier
20 day.”). (emphasis added)

21 366 P.3d at 1115, n.7.

22 Because plaintiff failed to take any action to prevent the Property from being sold to a bona fide
23 purchaser without notice of plaintiff’s unrecorded claim that the notice of default had been mailed to the
24 wrong address, 4254 Rolling Stone Dr Trust acquired title to the Property free of plaintiff’s subordinate
25 deed of trust.

26 **E. Even if the Property was sold for less than 20% of fair market value,**
27 **it does not satisfy the California rule adopted in Shadow Wood.**

28 At page 9 of its motion, plaintiff asserts that “[i]n Shadow Wood the Nevada Supreme Court
adopted the Restatement of Property Mortgages § 8.3 as the bench mark for gross inadequacy.” In
Shadow Wood, the Nevada Supreme Court instead applied the California rule that was first adopted by
the Nevada Supreme Court in Golden v. Tomiyasu, 79 Nev. 503, 387 P.2d 989 (1963). This is

1 appropriate because NRS 116.1108 states that “[t]he principles of law and equity, including . . . the law
2 of real property . . . supplement the provisions of this chapter, except to the extent inconsistent with this
3 chapter.”

4 Unlike the case law from Alaska, New Mexico, Oklahoma, West Virginia and Arizona cited at
5 pages 9 and 10 of plaintiff’s motion, the California rule adopted in Shadow Wood recognizes that a
6 grossly inadequate sale price does not justify relief from a foreclosure sale unless the grossly inadequate
7 sales price is caused by fraud, oppression or unfairness.

8 In Shadow Wood, there are three instances before the court refers to the Restatement where the
9 Court states, without contradiction or criticism, the standard that a foreclosure sale will not be set aside
10 absent fraud, oppression or unfairness which results in a grossly inadequate sales price.

11 The first citation to the fraud, oppression or unfairness standard specifically reaffirms the
12 standards as set forth in both the Long and Golden cases:

13 Shadow Wood and Gogo Way maintain that, under NRS 116.31166, recitals such as these
14 bar any post-sale challenge regardless of basis, whether it disputes the HOA’s compliance
15 with the statutory default, notice, and timing requirements or, as here, seeks to set aside
16 the sale for equity-based reasons. If true, this interpretation would call into question this
17 court’s statement in Long v. Towne, that **a common-interest community association’s**
18 **nonjudicial foreclosure sale may be set aside, just as a power-of-sale foreclosure sale**
19 **may be set aside, upon a showing of grossly inadequate price plus “fraud, unfairness,**
20 **or oppression.”** 98 Nev. at 13, 639 P.2d at 530 (citing Golden v. Tomiyasu, 79 Nev. 503,
21 514, 387 P.2d 989, 995 (1963) (stating that, while a power-of-sale foreclosure may not be
22 set aside for mere inadequacy of price, it may be **if the price is grossly inadequate and**
23 **there is “in addition proof of some element of fraud, unfairness, or oppression as**
24 **accounts for and brings about the inadequacy of price”** (internal quotation omitted))).
25 (emphasis added)

26 366 P.3d at 1110.

27 The second reference reaffirms the court’s equitable power to set aside a foreclosure sale in the
28 limited instances when an inadequate price is accompanied by fraud, oppression or unfairness, and cites
the Nevada and California cases that discuss these requirements:

While not directly addressing the preemption argument Shadow Wood and Gogo Way
make as to NRS 116.31166, our post-NRS 107.030(8) cases reaffirm that courts retain the
power, in an appropriate case, to set aside a defective foreclosure sale on equitable
grounds. *See Golden v. Tomiyasu*, 79 Nev. at 514, 387 P.2d at 995 (adopting the
California rule that “inadequacy of price, however gross, is not in itself a sufficient
ground for setting aside a trustee’s sale legally made; there must be in addition proof
of some element of fraud, unfairness, or oppression as accounts for and brings about

1 **the inadequacy of price**” (quoting *Oller v. Sonoma Cty. Land Title Co.*, 137 Cal.App.2d
2 633, 290 P.2d 880, 882 (Cal.Ct.App.1955)); *McLaughlin v. Mut. Bldg. & Loan Ass’n*, 57
3 Nev. 181, 191, 60 P.2d 272, 276 (1936) (noting that, in the context of an action to recover
4 possession of a property after a trustee sale, “[h]ad the conduct of the trustee and
5 respondent, in connection with the sale, been accompanied by any actual fraud, deceit, or
6 trickery, a more serious question would be presented”); *see also Nev. Land & Mortg. Co.*
7 *v. Hidden Wells Ranch, Inc.*, 83 Nev. 501, 504, 435 P.2d 198, 200 (1967) (“In the proper
8 case, the trial court may set aside a trustee’s sale upon the grounds of fraud or
9 unfairness.”). And, cases elsewhere to have addressed comparable conclusive-or
10 presumptive-effect recital statutes confirm that such recitals do not defeat equitable relief
11 in a proper case; rather, such recitals are “conclusive, *in the absence of grounds for*
12 *equitable relief.*” *Holland v. Pendleton Mortg. Co.*, 61 Cal.App.2d 570, 143 P.2d 493, 496
13 (Cal.Ct.App.1943) (emphasis added); *see Bechtel v. Wilson*, 18 Cal.App.2d 331, 63 P.2d
14 1170, 1172 (Cal.Ct.App.1936) (**distinguishing between a challenge to the sufficiency
15 of pre-sale notice, which was precluded by the conclusive recitals in the deed, and
16 an equity-based challenge based upon the alleged unfairness of the sale**); *compare* 1
17 Grant S. Nelson, *Real Estate Finance Law*, *supra*, § 7:23, at 986–87 (“After a defective
18 power of sale foreclosure has been consummated, mortgagors and junior lienholders in
19 virtually every state have an equitable action to set aside the sale.”) (footnotes omitted),
20 *with id.* § 7:22, at 980–82 (noting that “[m]any states have attempted to enhance the
21 stability of power of sale foreclosure titles by enacting a variety of *presumptive statutes*
22”), and 6 Baxter Dimaway, *Law of Distressed Real Estate*, § 64:161 (2015) (noting that
23 a trustee’s deed recital can be overcome on a showing of actual fraud). (emphasis added)

24 366 P.3d at 1110.

25 The third reference to the standard is in the paragraph immediately before the court mentions the
26 Restatement. The court, having twice stated the standard of an inadequate price as the result of fraud,
27 oppression and unfairness, then begins its review of these standards. The first element reviewed is the
28 standard for inadequate price, which contains a limited reference to the Restatement. The reference to the
Restatement must therefore be read in context with the prior paragraph which is the beginning of the
court’s analysis of each of the elements required for the court to invoke its equitable powers. The full,
two paragraph citation reads:

29 The question remains **whether NYCB demonstrated sufficient grounds** to justify the
30 district court in setting aside Shadow Wood’s foreclosure sale on NYCB’s motion for
31 summary judgment. *Breliant v. Preferred Equities Corp.*, 112 Nev. 663, 669, 918 P.2d
32 314, 318 (1996) (stating the burden of proof rests with the party seeking to quiet title in
33 its favor). **As discussed above, demonstrating that an association sold a property at
34 its foreclosure sale for an inadequate price is not enough to set aside that sale; there
35 must also be a showing of fraud, unfairness, or oppression.** *Long*, 98 Nev. at 13, 639
36 P.2d at 530.

37 **NYCB failed to establish that the foreclosure sale price was grossly inadequate as a
38 matter of law.** NYCB compares Gogo Way’s purchase price, \$11,018.39, to the amount
39 NYCB bought the property for at its foreclosure sale, \$45,900.00. Even using NYCB’s
40 purchase price as a comparator, and adding to that sum the \$1,519.29 NYCB admits

1 remained due on the superpriority lien following NYCB's foreclosure sale, Gogo Way's
2 purchase price reflects 23 percent of that amount and is therefore not obviously
3 inadequate. *See Golden*, 79 Nev. at 511, 387 P.2d at 993 (noting that even where a
4 property was "sold for a smaller proportion of its value than 28.5%," it did not justify
5 setting aside the sale); *see also Restatement (Third) of Prop.: Mortgages § 8.3 cmt. b*
(1997) (stating that while "[g]ross inadequacy cannot be precisely defined in terms
of a specific percentage of fair market value[, g]enerally ... a court is warranted in
invalidating a sale where the price is less than 20 percent of fair market value and,
absent other foreclosure defects, is usually not warranted in invalidating a sale that
yields in excess of that amount"). (emphasis added)

6 366 P.3d at 1112.

7 An examination of the Restatement shows that the entirety of comment b to section 8.3 actually
8 favors the purchaser's position because it is specific to legal proceedings occurring post foreclosure when
9 a bona fide purchaser acquires title to the real property.

10 A portion of comment a to Section 8.3 notes that "close judicial scrutiny of the sale price is more
11 justifiable when the price is being employed to calculate the amount of a deficiency judgment context."

12 The "Reporters' Note" portion to comment b contained on page 590 states in part:

13 All jurisdictions take the position that mere inadequacy of the foreclosure sale price, not
14 accompanied by other defects in the foreclosure process, will not automatically invalidate
a sale. (case citations omitted)

15 The Shadow Wood case cites Golden v. Tomiyasu, 79 Nev. 503, 387 P.2d 989 (1963), where the
16 Nevada Supreme Court stated:

17 The court then referred to the inadequacy of the consideration and said: "However, even
18 assuming that the price was inadequate, that fact standing alone would not justify setting
19 aside the trustee's sale. 'In California, **it is a settled rule that inadequacy of price,**
however gross, is not in itself a sufficient ground for setting aside a trustee's sale
legally made; there must be in addition proof of some element of fraud, unfairness, or
20 oppression as accounts for and brings about the inadequacy of price.'" (emphasis added)

21 79 Nev. at 515, 387 P.2d at 995.

22 At page 10 of its motion, plaintiff cites the retrospective appraisal report attached as Exhibit 12
23 to its motion as proof that the fair market value of the Property on the date of the HOA foreclosure sale
24 was \$48,000.00. At the bottom of page #3 of the report, however, the report states:

25 The appraiser made an exterior only inspection which involves the use of an extraordinary
26 assumption that no adverse conditions exist that may affect the livability, soundness, or
structural integrity, and all subject data used from assessor records and MLS, which if
found to be false, could affect the appraisers opinion of value and conclusions.

1 Plaintiff's motion is not supported by any evidence proving that the "extraordinary assumption"
2 is true, so the retrospective appraisal report is not competent evidence of the fair market value of the
3 Property on the date of the HOA foreclosure sale.

4 The appraisal report also fails to mention the Detrimental Condition that distinguishes the
5 Property in the present case from the six comparable sales listed at pages 3 and 5 of the appraisal report.
6 Unlike the six comparable sales (3 traditional sales, 1 REO sale, 1 FHA foreclosure, 1 foreclosure), 4254
7 Rolling Stone Dr Trust did not receive insurable clear title to the Property because no title company in
8 Southern Nevada is willing to issue title insurance following an HOA foreclosure sale. The lack of
9 insurable clear title precludes traditional financing options to future buyers and adversely affects
10 Resources Group's right of disposition of the Property.

11 The Appraisal of Real Estate, 14th Edition, p. 406 (Chicago: Appraisal Institute, 2013) states:
12 "Before a comparable sale property can be used in sales comparison analysis, the appraiser must first
13 ensure that the sale price of the comparable property applies to **property rights that are similar** to those
14 being appraised." (emphasis added) Because the appraisal report offered by plaintiff violates this
15 standard, the value assigned to the Property by plaintiff's appraiser is merely hypothetical.

16 As proved by the appraisal review, dated August 31, 2016, prepared by Brunson Jiu LLC attached
17 hereto as Exhibit N, on the date of the foreclosure sale, the fee simple impaired value of the Property as
18 of January 25, 2012 was only \$5,300.

19 **F. Plaintiff's motion is not supported by the required evidence of fraud, unfairness,
20 or oppression "as accounts for and brings about the claimed inadequacy of price."**

21 At page 14 of its motion, plaintiff advances two "theories" to support its claim that unfairness is
22 present. First, plaintiff claims that the CC&Rs misrepresent the asset being sold because Article VI,
23 Section 11 of the CC&Rs states that "[t]he lien of the assessments provided for herein shall be
24 subordinate to the lien of any first mortgage." (Exhibit K attached)

25 As discussed at page 10 above, when Nevada adopted the UCIOA in Nevada in 1991, NRS
26 116.1206(1) expressly provided that the CC&Rs "shall be deemed to conform with those provisions by
27 operation of law, and any such declaration, bylaw or other governing document is not required to be
28

1 amended to conform to those provisions.” Likewise, in SFR Investments Pool 1, LLC v. U.S. Bank, N.A.,
2 130 Nev., Adv. Op. 75, 334 P.3d 408, 419 (2014), the Nevada Supreme Court held that NRS 116.1104
3 prevented any language in the CC&Rs from varying or waiving the HOA’s superpriority lien rights.
4 Plaintiff’s motion does not include any evidence proving that any person chose not to bid on the Property
5 because of the language in Article VI, Section 11 of the CC&Rs.

6 At the bottom of page 15 of its motion, plaintiff states: “U.S. Bank contends the bidding was
7 unintentionally chilled per the Restatement as adopted by *Shadow Wood*.” The foreclosure sale in the
8 present case took place on January 25, 2012, so the bidding could not have been influenced by the
9 reference to the Restatement made in Shadow Wood on January 28, 2016. On the other hand, Nevada’s
10 adoption of the California rule took place long before January 25, 2012.

11 At page 16 of its motion, plaintiff argues that “[t]he publically available documents, which are
12 subject to constructive notice, stated *publically* that this was a sale Subject to a mortgage.” No such
13 language appears in the notice of delinquent assessment (lien), the notice of default, or the notice of
14 trustee’s sale. Each of these notices stated “the total amount of the lien” as approved by the Nevada
15 Supreme Court in SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 334 P.3d at 418.

16 At page 16 of its motion, plaintiff argues that fraud is present because Ryan Kербow, “an
17 individual who conducted a sale” was “the *purchaser’s attorney*.” Plaintiff’s motion is not supported by
18 any evidence that Ryan Kербow conducted the public auction held on January 25, 2012 or that Ryan
19 Kербow represented Mr. Haddad or 5254 Rolling Stone Cr Trust on the date of the sale. In his deposition,
20 Mr. Haddad testified that he did not know when he first hired Ryan Kербow to file quiet title actions or
21 when he stopped using Mr. Kербow. (Exhibit 14 to plaintiff’s motion, pg. 49, ll. 3-18, and pg. 50, ll. 2-7)

22 Plaintiff also argues that “[t]he Notice of Default was not noticed on U.S. Bank, which is
23 completely undisputed.” To the contrary, Exhibit G proves that a copy of the notice of default was mailed
24 on April 5, 2014 to “US Recordings, 2925 Country Drive Ste 201, St. Paul, MN 55117,” which is the
25 mailing address listed as the “Return To (name and address)” in the upper left hand corner of the deed
26 of trust. (Exhibit C) Plaintiff’s motion is not supported by any evidence that plaintiff did not receive
27 mail directed to this publicly disclosed address.

1 Furthermore, Exhibit I proves that copies of the notice of foreclosure sale were timely mailed to
2 the same "Return To (name and address)" in the upper left hand corner of the deed of trust and also to
3 the address for U.S. Bank National Association ND, 4325 17th Avenue SW, Fargo, ND 58103 listed in
4 Paragraph 1 on page 1 of the deed of trust.

5 As a result, plaintiff's claim at page 16 of its motion that "[t]his is insider dealing at it's worst"
6 is not supported by competent evidence.

7 **G. Plaintiff has not produced any evidence proving that 4254 Rolling Stone Dr Trust**
8 **was not a bona fide purchaser.**

9 At page 16 of its motion, plaintiff asserts that "Resources has not met their burden of production
10 under Nevada law as bona fide purchaser status is their burden." To the contrary, because plaintiff is
11 seeking equitable relief from the "conclusive" foreclosure deed, it is plaintiff's burden to allege and prove
12 that 4254 Rolling Stone Dr Trust was not a bona fide purchaser.

13 In First Fidelity Thrift & Loan Ass'n v. Alliance Bank, 60 Cal. App. 4th 1433, 71 Cal. Rptr. 2d
14 295 (1998), the court recognized that where a party is seeking equitable relief, the burden is on the party
15 seeking equitable relief to allege and prove that the person holding legal title is not a bona fide purchaser:

16 **That Alliance had knowledge of First Fidelity's equitable claim for reinstatement of**
17 **its reconveyed deed of trust was an element of First Fidelity's case.** "The general rule
18 places the burden of proof upon a person claiming bona fide purchaser status to present
19 evidence that he or she acquired interest in the property without notice of the prior
20 interest. (Bell v. Pleasant (1904) 145 Cal. 410, 413-414, 78 P. 957; Alcorn v. Buschke
21 (1901) 133 Cal. 655, 657-658, 66 P. 15; Hodges v. Lochhead (1963) 217 Cal. App.2d 199,
22 203, 31 Cal. Rptr. 879; 2 Miller & Starr, Current Law of Cal. Real Estate [1977] § 11:28,
p. 51.) ... [¶] If the prior party claims an equitable rather than a legal title, however, the
burden of proof is upon the person asserting that title. (Bell v. Pleasant, *supra*, 145 Cal.
410, 414-415, 78 P. 957; Garber v. Gianella (1893) 98 Cal. 527, 529-530, 33 P. 458; 2
Miller & Starr, Current Law of Cal. Real Estate, *supra*, § 11:28, pp. 52-53.)" (Gates
Rubber Co. v. Ulman (1989) 214 Cal. App. 3d 356, 366, fn. 6, 262 Cal. Rptr. 630.) (2b)
Showing that Alliance was not an innocent purchaser for value was hence an element
of First Fidelity's claim. (Firato v. Tuttle, *supra*, 48 Cal.2d 136, 138, 308 P.2d 333.)
(emphasis added)

23 60 Cal. App. 4th at 1442, 71 Cal. Rptr. at 301.

24 At page 16 of its motion, plaintiff also asserts that "they had constructive notice of the defective
25 lien documents which resulted in chilled bidding." Plaintiff's motion is not supported by any evidence
26 proving this claim. At the bottom of page 17 of its motion, plaintiff cites Berge v. Fredericks, 95 Nev.

1 183, 591 P.2d 246 (1979), where the court reversed a summary judgment entered in favor of the
2 respondent (purchaser) because the respondent and the seller were intimately related and because the
3 respondent had actual notice of appellant's residence on the property being sold. The court quoted the
4 general rule that "open, notorious, and exclusive possession and occupation of lands by a stranger to a
5 vendor's title, as of record, at the time of a purchase" is sufficient to put a purchaser on inquiry as to the
6 legal or equitable rights of the party in possession. 591 P.2d at 249. No such evidence exists in the
7 present case.

8 In the last sentence on page 17 of its motion, plaintiff argues that "[t]he CC&R's disclaim
9 *everything*." (emphasis added). The exact opposite is true. Article VI in the CC&Rs expressly provides
10 that the HOA has the authority to record an assessment lien against the Property. NRS Chapter
11 116.3116(2) defined the superpriority portion of the lien. NRS 116.31162 to NRS 116.31168, and by
12 incorporation, NRS 107.090, defined the nonjudicial procedure used to foreclose the lien. NRS 116.1206
13 confirmed that the provisions of the CC&Rs would be deemed to conform with the provisions of NRS
14 Chapter 116 "by operation of law." NRS 116.1104 confirmed that the HOA's superpriority lien rights
15 could not be varied or waived by any language in the CC&Rs.

16 Consequently, absolutely nothing appeared in the public record that would charge 4254 Rolling
17 Stone Dr Trust with notice of any defect in the foreclosure of the HOA's superpriority lien and the
18 extinguishment of plaintiff's subordinate deed of trust.

19 **H. The foreclosure sale was not void.**

20 Based solely on plaintiff's contention that the foreclosure agent mailed the notice of default to
21 plaintiff at an incorrect address, plaintiff states at page 18 of its motion that "[t]his writer is of the opinion
22 that a foreclosure in this manner is not 'voidable' but 'void.'" None of the cases cited by plaintiff support
23 this conclusion.

24 In Ocwen Loan Servicing LLC v. Gonzalez Financial Holdings, Inc., 77 F. Supp. 3d 584 (S.D.
25 Tex. 2015), the holder of a tax lien failed to mail the notice of foreclosure sale to the assignee of record
26 of a deed of trust, and the court found that the lender's due process rights had been violated. In the
27
28

1 present case, due process is not an issue because no state actor participated in the nonjudicial foreclosure
2 of the HOA's superpriority lien. Lugar v. Edmondson Oil Co., Inc., 475 U.S. 922 (1982).

3 Moreover, it is undisputed that the foreclosure agent mailed the notice of default to the return to
4 address on the deed of trust (Exhibit G), and the foreclosure agent mailed the notice of trustee's sale to
5 both the return to address and the address listed in paragraph 1 of the deed of trust (Exhibit I). Plaintiff
6 has not produced any evidence proving that it did not receive both of the notices.

7 At page 19 of its motion, plaintiff cites Rosenberg v. Smidt, 727 P.2d 778 (Alaska 1986), where
8 the Alaska Supreme Court recognized that the failure to mail the notice of default to the publicly
9 disclosed address for the defaulting borrowers after the initial notice was returned "unclaimed" only made
10 the sale "voidable" and not "void":

11 First, the Smidts claim that the statute does not apply to void sales. They correctly state
12 the general rule that "[t]he doctrine of good faith purchaser for value without notice does
13 not apply to a purchaser at a void foreclosure sale." Henke v. First Southern Properties,
14 Inc., 586 S.W.2d 617, 620 (Tex. Civ. App. 1979). They misapply the rule, however, to
15 the sale by Alaska Title. They fail to distinguish "void" from "voidable" sales. *See Real*
16 *Estate Finance Law*, § 7.20 at 477-78. **Only substantial defects such as the lack of a**
17 **substantive basis to foreclose in the first place will make a sale void.** *Id.* at 477 & 7.21
18 at 489-90. *Henke* itself illustrates the most common basis for finding a void sale: the
19 absence of default. 586 S.W.2d at 620. Where a defect in a foreclosure sale makes it
20 merely voidable, however, sale to a bfp cuts off the trustor's ability to set aside the sale.
21 See Swindell v. Overton, 310 N.C. 707, 314 S.E.2d 512, 517 (1984); *Real Estate Finance*
22 *Law*, § 7.21 at 489. **Here, the alleged defect went not to the trustee's right to proceed**
23 **with foreclosure but only to "the mechanics of exercising the power."** *Id.* at 490.
24 Thus, if the Rosenbergs were bfp's, **the Smidts cannot set aside what is not a void, but**
25 **a voidable, sale.**

26 727 P.2d at 783-784.

27 In the present case, plaintiff is making the exact type of attack that the Alaska Supreme Court
28 recognized makes a sale "voidable" and not "void." The court in Rosenberg set the sale aside because
it found that the buyer was not a bona fide purchaser.

23 Sonderman v. Remington Construction Co., Inc., 127 N. J. 96, 603 A.2d 1 (1992), is unlike the
24 present case because it involved an in rem tax foreclosure judgment that was vacated by the court before
25 plaintiff purchased the property from the Township of Jackson at public auction. The court focused on
26 the record owner's failure to record the order vacating the judgment before the public auction was held.
27 The present case, on the other hand, involves a nonjudicial foreclosure sale.

1 In Fjeldsted v. Lien (In re Fjeldsted), 293 B.R. 12 (9th Cir. BAP 2003), the court reversed the
2 bankruptcy court's decision to annul the automatic stay retroactively in order to validate a postpetition
3 foreclosure sale of the debtor's residence. In the present case, the former owner did not file a bankruptcy
4 petition prior to the HOA foreclosure sale.

5 In Dimock v. Emerald Properties LLC, 81 Cal. App. 4th 868, 97 Cal. Rptr. 2d 255 (2000), the
6 trustee named in a deed of trust recorded a notice of default, and a second trustee recorded a substitution
7 of trustee and a second notice of default. The agent for the initial trustee recorded a notice of trustee's
8 sale and completed the sale of the property to Emerald Properties LLC. The trial court entered judgment
9 for the former owners because the initial trustee did not have authority to conduct the sale because of the
10 recorded substitution of trustee. 97 Cal. Rptr. at 260-261. No such facts exist in the present case.

11 In Dimrock, the court cited Little v. CFS Service Corp., 188 Cal. App. 3d 1354, 233 Cal. Rptr.
12 923 (1987), where the court found that when recitals of regularity appear in a deed, notice defects only
13 make the deed voidable, and that the trustor bears the burden of showing that there are grounds for
14 equitable relief from the deed, such as fraud or that the buyer was not a bona fide purchaser for value.
15 97 Cal. Rptr. at 261-262. This same distinction was recognized by the Nevada Supreme Court in section
16 II (B) of the Shadow Wood opinion quoted at pages 19 and 20 above.

17 In Bechtel v. Wilson, 18 Cal. App. 2d 331, 335, 63 P.2d 1170, 1172 (1936), which is cited by
18 Shadow Wood, the defendants objected that separate notices of sale were not posted on each of the lots
19 sold, but that the lots were grouped under one notice. The court stated that it need not consider the
20 conflicting evidence because **"the recitals in the trustee's deed of due and proper posting is made**
21 **conclusive evidence thereof by the deed of trust and this alone is sufficient to sustain the trial court's**
22 **findings on that issue."** (emphasis added)

23 The foreclosure deed in the present case recites: "All requirements of law regarding **the mailing**
24 **of copies of notices** and the posting and publication of the copies of the Notice of Sale have been
25 complied with." (emphasis added) As recognized in Shadow Wood, this recital is "conclusive" against
26 the plaintiff and cannot support a claim for relief against the purchaser, 4254 Rolling Stone Dr Trust, or
27 its successor, Resources Group.

1 **I. The HOA foreclosure sale was not a fraudulent transfer.**

2 At page 19 of its motion, plaintiff contends that “the HOA sale is void as a constructively
3 fraudulent transfer under NRS § 112.190(1).” The HOA foreclosure sale cannot be a fraudulent transfer,
4 however, because the Property is not an “asset” as defined by NRS 112.150(2) and because plaintiff has
5 not proved that George R. Edwards was insolvent.

6 NRS 112.190(1) provides: “A **transfer** made or obligation incurred by a debtor is fraudulent as
7 to a creditor whose claim arose before the **transfer** was made or the obligation was incurred if **the debtor**
8 **made the transfer** or incurred the obligation without receiving a reasonably equivalent value in exchange
9 for the **transfer** or obligation **and the debtor was insolvent** at that time or the debtor became insolvent
10 as a result of the **transfer** or obligation.” (emphasis added)

11 NRS 112.150(12) defines “transfer” as “every mode, direct or indirect, absolute or conditional,
12 voluntary or involuntary, of disposing of or parting with an **asset** or an interest in an **asset**, and includes
13 payment of money, release, lease and creation of a lien or other encumbrance.” (emphasis added)

14 NRS 112.150(2) defines the word “asset” and provides:

15 2. “Asset” means property of a debtor, **but the term does not include:**

16 (a) **Property to the extent it is encumbered by a valid lien;**

17 (b) **Property to the extent it is generally exempt under nonbankruptcy law;**

18 or

19 (c) An interest in property held in tenancy by the entireties or as community
20 property to the extent it is not subject to process by a creditor holding a claim
21 against only one tenant. (emphasis added)

22 In the present case, the Property does not constitute an “asset” under NRS 112.150 because at the
23 time of the HOA foreclosure sale, the Property was encumbered by valid liens. The principal amount of
24 the note secured by plaintiff’s deed of trust was \$50,000.00, and plaintiff claims that the Property was
25 worth only \$48,000.00 on January 25, 2012.

26 NRS 21.090(1)(l) also exempts from execution “[t]he homestead as provided for by law,” and
27 NRS 115.010(1) provides that “[t]he homestead is not subject to forced sale on execution or any final
28 process from any court, except as provided by subsections 2, 3 and 5, and NRS 115.090 and except as
otherwise required by federal law.” In Savage v. Pierson, 123 Nev. 86, 157 P.3d 697 (2007), the Nevada

1 Supreme Court recognized that “Nevada’s Constitution provides for a homestead exemption” and that
2 “[t]he Legislature enacted what is now NRS 21.090 to fulfill the mandate set forth in Nevada’s
3 Constitution.” The Court also stated that “the exemptions set forth in NRS 21.090 are ‘absolute and
4 unqualified,’ with few exceptions, ‘and [their] effect is to remove the property beyond the reach of legal
5 process.”

6 NRS 115.010(2) provides that the homestead exemption “extends only to that amount of equity
7 in the property held by the claimant which does not exceed \$550,00 in value” In the present case,
8 plaintiff has not proved that former owner held equity in the Property that exceeded the amount of
9 \$550,000 even if plaintiff’s extinguished deed of trust is not counted as a lien against the Property.
10 Consequently, the property sold at the HOA foreclosure sale was not an “asset” as required by NRS
11 112.150(2)(b).

12 Comment (2) to section 1 of the Uniform Fraudulent Transfer Act discusses the definition of the
13 word “asset” and recognizes:

14 Subparagraphs (i), (ii), and (iii) provide clarification by excluding from the term not only
15 generally exempt property but also an interest in a tenancy by the entirety in many states
16 and an interest **that is generally beyond reach by unsecured creditors because subject**
17 **to a valid lien.** This Act, like its predecessor and the Statute of 13 Elizabeth, declares
18 rights and provides remedies for unsecured creditors against transfers that impede them
19 in the collection of their claims. The laws protecting valid liens against impairment by
levying creditors, **exemption statutes**, and the rules restricting levyability of interest in
entireties property are limitations on the rights and remedies of unsecured creditors, and
it is therefore appropriate to exclude property interests that are beyond the reach
of unsecured creditors from the definition of “asset” for the purposes of this Act.
(emphasis added)

20 As revealed by this comment, the clear intent of the Uniform Fraudulent Transfer Act is to protect
21 “unsecured” creditors from having a debtor place **nonexempt** assets beyond their reach. No part of the
22 Act is intended to protect a “secured” creditor from losing its security when it allows a senior interest to
23 be foreclosed. Here, because plaintiff was a secured creditor, the statutes do not apply to the plaintiff.

24 At page 24 of its motion, plaintiff claims that the property was worth \$48,000.00 at the time of
25 the foreclosure sale. As discusses at pages 21 and 22 above, the fee simple impaired value of the Property
26 as of January 25, 2012 was only \$5,300.

1 NRS 112.190(1) also requires that plaintiff prove that “the debtor was insolvent at that time or
2 became insolvent as a result of the transfer or obligation.” At the bottom of page 25 of its motion,
3 plaintiff cites NRS 112.160(2) and claims that “all U.S. Bank need do it demonstrate that the Homeowner
4 was not paying his debts as they came due.” Plaintiff leaves out the word “generally” that is part of the
5 required showing: “A debtor who is **generally** not paying his or her debts as they become due is presumed
6 to be insolvent.” (emphasis added)

7 In the alternative, NRS 112.160(1) provides that “[a] debtor is insolvent if the sum of the debtor’s
8 debts is greater than all of the debtor’s assets at a fair valuation.”

9 Plaintiff’s motion is not supported by admissible evidence that would prove that the former owner
10 met the requirements of either NRS 112.160(1) or NRS 112.160(2).

11 The Nevada Supreme Court has repeatedly held that foreclosure of a senior lien extinguishes all
12 subordinate liens. McDonald v. D.P. Alexander & Las Vegas Boulevard, LLC, 121 Nev. 812, 818, 123
13 P.3d 748 (2005); Brunzell v. Lawyers Title Ins. Co., 101 Nev. 395, 705 P.2d 642 (1985); Aladdin
14 Heating Corp. v. Trustees of Central States, 93 Nev. 257, 563 P.2d 82 (1977); Erickson Construction Co.
15 v. Nevada National Bank, 89 Nev. 359, 513 P.2d 1236 (1973). The Nevada Supreme Court applied this
16 same rule in SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 130 Nev., Adv. Op. 75, 334 P.3d 408,
17 419 (2014). No provision in the Uniform Fraudulent Transfer Act leads to a different result.

18 A provision which specifically applies to a given situation will take precedence over one that only
19 applies generally. Nevada Power Co. v. Haggerty, 115 Nev. 353, 364, 989 P.2d 870, 877 (1999); SIIS
20 v. Surman, 103 Nev. 366, 368, 741 P.2d 1357, 1359 (1987); Sierra Life Ins. Co. v. Rottman, 95 Nev. 654,
21 656, 601 P.2d 56, 57-58 (1979); W.R. Co. v. City of Reno, 63 Nev. 330, 172 P.2d 158 (1946). To allow
22 plaintiff to collaterally attack the “conclusive” HOA foreclosure deed based on general provisions in the
23 Uniform Fraudulent Transfer Act would violate this rule of statutory construction.

24 **J. The nonjudicial foreclosure sale did not violate the Eighth Amendment or the**
25 **Takings clauses of the United States and Nevada Constitutions.**

26 The Eighth Amendment prohibits the government from requiring excessive bail, imposing
27 excessive fines, or inflicting cruel and unusual punishment. The nonjudicial foreclosure sale in this case
28

1 involved no such conduct. BMW of North America, Inc. v. Gore, 517 U.S. 559, 584 (1996), involved
2 an award of punitive damages that exceeded the maximum statutory penalty authorized by the Alabama
3 Legislature for similar misconduct. No punitive damages were awarded by any court in the present case.

4 The HOA and its foreclosure agent also took no property “for public use” as required by the Fifth
5 Amendment to the United States Constitution or Article 1, Section 8 of the Nevada Constitution. At page
6 29 of its motion, plaintiff asserts that “[t]he Statute, enact by the Nevada Legislature, constitutes a
7 government ‘taking.’” At page 30 of its motion, plaintiff also asserts: “Make no mistake, NRS §
8 116.3116 *et seq* is government conduct.” As noted at pages 8 and 9 above, Lugar v. Edmondson Oil Co.,
9 Inc., 475 U.S. 922 (1982), instead states that the enactment of a statutory remedy cannot transform a
10 private party using the statutory remedy into a “state actor.”

11 CONCLUSION

12 Accordingly, it is respectfully requested that this Court enter an order denying plaintiff’s motion
13 for summary judgment.

14 DATED this 19th day of January, 2017

15 LAW OFFICES OF
16 MICHAEL F. BOHN, ESQ., LTD.

17 By: / s / Michael F. Bohn, Esq. /
18 Michael F. Bohn, Esq.
19 376 E. Warm Springs Road, Ste. 140
20 Las Vegas, Nevada 89119
21 Attorney for Resources Group, LLC
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Kristin A. Schuler-Hintz, Esq.
Thomas N. Beckom, Esq.
McCarthy & Holthus, LLP
9510 W. Sahara Ave., Ste. 200
Las Vegas, NV 89117
Attorney for plaintiff/counterdefendant

/s/ Marc Sameroff
An Employee of the LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.

EXHIBIT A

EXHIBIT A

Inst #: 201205290002144

Fees: \$18.00 N/C Fee: \$0.00

RPTT: \$0.00 Ex: #007

05/29/2012 02:44:44 PM

Receipt #: 1178391

Requestor:

RESOURCE GROUP LLC

Recorded By: SCA Pgs: 3

DEBBIE CONWAY

CLARK COUNTY RECORDER

APN: 163-24-111-021

RECORDING REQUESTED BY:

**When Recorded Mail Document
and Tax Statement To:**

Bourne Valley Court Trust
900 S. Las Vegas Blvd #810
Las Vegas, NV 89101

RPTT: \$ EXEMPT 7

GRANT, BARGAIN, SALE DEED

THIS INDENTURE WITNESSETH: That Resources Group LLC, a Nevada Limited Liability Company, Trustee of the Rollingstone Drive Trust dated 01/25/2012 who acquired title as Rollingstone Drive Trust

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, do(es) hereby Grant, Bargain, Sell and

Convey to Resources Group LLC, a Nevada Limited Liability Company as Trustee of the Bourne Valley Court Trust dated 05/04/2012

all that real property situated in Clark County, State of Nevada, bounded and described as follows:

PARCEL I:

LOT NINETEEN (19) OF GLENVIEW WEST TOWNHOMES, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 30 OF PLATS, PAGE 65, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL II:

AN EASEMENT FOR INGRESS AND EGRESS OVER THE COMMON AREA AND PRIVATE STREETS AS SHOWN BY MAP THEREOF ON FILE IN BOOK 30 OF PLATS, PAGE 65, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

SUBJECT TO: 1. Taxes for the fiscal year 2011-2012

2. Covenants, Conditions, Reservations, Rights, Rights of Way and Easements now of record.

Together with all and singular tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

DATED: May 29, 2012

STATE OF NV

COUNTY OF CLARK

I, KRYSTA SITKO, a Notary Public of the
County and State first above written, do hereby
certify that lyad Haddad personally appeared
before me this day and acknowledged the due
execution of the foregoing instrument.

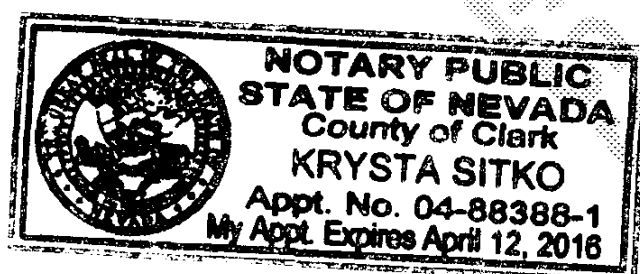
Witness my hand and official seal, this the

29th of MAY 2012

Notary Public KRYSTA SITKO

My Commission Expires: 4/12/16

(SEAL)



Rollingstone Drive Trust dated 01/25/2012

By: Resources Group LLC, a Nevada Limited
Liability Company

BY: [Signature]
lyad Haddad, Manager

**STATE OF NEVADA
DECLARATION OF VALUE**

1. Assessor Parcel Number(s)

- a) 163-24-111-021
b) _____
c) _____
d) _____

2. Type of Property:

- | | | | |
|-----------------------------|-----------------|--|------------------|
| a) <input type="checkbox"/> | Vacant Land | b) <input checked="" type="checkbox"/> | Single Fam. Res. |
| c) <input type="checkbox"/> | Condo/Townhouse | d) <input type="checkbox"/> | 2-4 Plex |
| e) <input type="checkbox"/> | Apt. Bldg. | f) <input type="checkbox"/> | Comm'l/Ind'l |
| g) <input type="checkbox"/> | Agricultural | h) <input type="checkbox"/> | Mobile Home |
| i) <input type="checkbox"/> | Other | | |

FOR RECORDERS OPTIONAL USE ONLY

Book: _____ Page: _____
Date of Recording: _____
Notes: _____

Cent of Trust son

3. a) Total Value/Sales Price of Property \$ _____
b) Deed in Lieu of Foreclosure Only (value of property) \$ _____
c) Transfer Tax Value: \$ _____
d) Real Property Tax Due \$ 0.00

4. If Exemption Claimed:

- a) Transfer Tax Exemption, per NRS 375.090, Section: 7
b) Explain Reason for Exemption: TRUST TO TRUST
WITHOUT CONSIDERATION

5. Partial Interest: Percentage being transferred: 100.00%

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein.

Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature: _____

Capacity: _____ Grantor

Signature: _____

Capacity: _____ Grantee

SELLER (GRANTOR) INFORMATION

BUYER (GRANTEE) INFORMATION

(Required)

(Required)

Print Name: Rollingstone Drive Trust dated
01/25/2012

Print Name: Bourne Valley Court Trust

Address: 900 S. Las Vegas Blvd #810

Address: 900 S. Las Vegas Blvd #810

City, State, Zip: Las Vegas, NV 89101

City, State, Zip: Las Vegas, NV 89101

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

Fidelity National Title Agency of Nevada, Inc.

Escrow #: FT13-FT00000442-LC

3100 W Sahara Avenue #115

Las Vegas, NV 89102

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

EXHIBIT B

EXHIBIT B

2-1

Inst #: 201201310001704
Fees: \$17.00 N/C Fee: \$0.00
RPTT: \$28.05 Ex: #
01/31/2012 09:09:48 AM
Receipt #: 1052023
Requestor:
ALESSI & KOENIG LLC (JUNES
Recorded By: DXI Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded mail to and
Mail Tax Statements to:
4254 Rolling Stone Dr Trust
PO Box 36208
Las Vegas, NV 89133

A.P.N. No.163-24-111-021

TS No. 24230-4254

TRUSTEE'S DEED UPON SALE

The Grantee (Buyer) herein was: **4254 Rolling Stone Dr Trust**
The Foreclosing Beneficiary herein was: **Glenview West Townhomes Association**
The amount of unpaid debt together with costs (Real Property Transfer Tax Value): **\$5,331.00**
The amount paid by the Grantee (Buyer) at the Trustee's Sale: **\$5,331.00**
The Documentary Transfer Tax: **\$28.05**
Property address: **4254 ROLLINGSTONE DR, LAS VEGAS, NV 89103**
Said property is in [] unincorporated area: City of **LAS VEGAS**
Trustor (Former Owner that was foreclosed on): **EDWARDS GEORGE R TRUST**

Alessi & Koenig, LLC (herein called Trustee), as the duly appointed Trustee under that certain Notice of Delinquent Assessment Lien, recorded **January 4, 2011** as instrument number **0005412**, in **Clark County**, does hereby grant, without warranty expressed or implied to: **4254 Rolling Stone Dr Trust** (Grantee), all its right, title and interest in the property legally described as: **LOT 19**, as per map recorded in **Book 30, Pages 65** as shown in the Office of the County Recorder of **Clark County Nevada**.

TRUSTEE STATES THAT:

This conveyance is made pursuant to the powers conferred upon Trustee by NRS 116 et seq., and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the office of the recorder of said county. All requirements of law regarding the mailing of copies of notices and the posting and publication of the copies of the Notice of Sale have been complied with. Said property was sold by said Trustee at public auction on **January 25, 2012** at the place indicated on the Notice of Trustee's Sale.

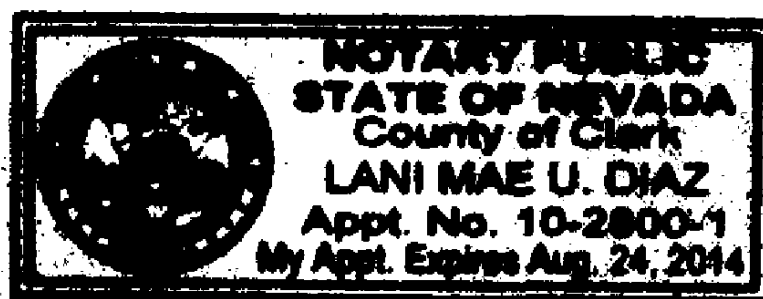
Ryan Kerbow, Esq

Signature of AUTHORIZED AGENT for Glenview West Townhomes Association

State of Nevada)
County of Clark)

SUBSCRIBED and SWORN to before me Jan. 27, 2012

WITNESS my hand and official seal.
(Seal)



(Signature)

#APPT
* 10-2800-1

**STATE OF NEVADA
DECLARATION OF VALUE**

1. Assessor Parcel Number(s)

- a. 163-24-111-021
b. _____
c. _____
d. _____

2. Type of Property:

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

FOR RECORDERS OPTIONAL USE ONLY

Book _____ Page: _____

Date of Recording: _____

Notes: _____

3.a. Total Value/Sales Price of Property

\$ 5,331.00

b. Deed in Lieu of Foreclosure Only (value of property (_____)

c. Transfer Tax Value:

\$ 5,331.00

d. Real Property Transfer Tax Due

\$ 28.05

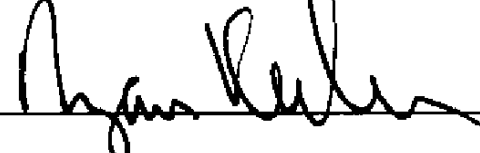
4. If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section _____

b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100.00 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature  Capacity: Grantor

Signature _____ Capacity: _____

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: Alessi&Koenig, LLC
Address: 9500 W Flamingo # 205
City: Las Vegas
State: NV Zip: 89147

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: 4254 Rolling Stoone Dr Trust
Address: PO Box 36208
City: Las Vegas
State: NV Zip: 89133

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

Print Name: Alessi&Koenig, LLC
Address: 9500 W Flamingo # 205
City: Las Vegas

Escrow # N/A Foreclosure
State: NV Zip: 89147

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

EXHIBIT C

EXHIBIT C

18

20090326-0003747

Prepared By:
Southwest Financial Services, Ltd.
537 E Pete Rose Way, STE 300
Cincinnati, OH 45202



014560224-000028152

Return To (name and address):
US Recordings
2925 Country Drive STE 201
St. Paul, MN 55117

Assessor's Parcel Number: .163-24-111-021,EN

Fee: \$21.00

N/C Fee: \$25.00

03/26/2009

16:35:04

T20090104864

Requestor:

US RECORDINGS INC

Debbie Conway

STN

Clark County Recorder Pgs: 8

____ State of Nevada _____ Space Above This Line For Recording Data _____

75536829-NBC
312628

DEED OF TRUST
(With Future Advance Clause)

☐ Master Mortgage

Recorded By

By

By
(Signature) (Date)

1. **DATE AND PARTIES.** The date of this Deed of Trust (Security Instrument) is ...03/03/2009...
..... The parties and their addresses are:

GRANTOR:

GEORGE R. EDWARDS, UNMARRIED

163-24-111-021, ENTIRE PROPERTY

☐ If checked, refer to the attached Addendum incorporated herein, for additional Grantors,
their signatures and acknowledgments.

TRUSTEE:

U.S. Bank Trust Company, National Association,
a national banking association organized under the laws of the United States
111 SW Fifth Avenue
Portland, OR 97204

LENDER:

U.S. Bank National Association ND,
a national banking association organized under the laws of the United States
4325 17th Avenue SW
Fargo, ND 58103

NEVADA - HOME EQUITY LINE OF CREDIT DEED OF TRUST
(NOT FOR FNMA, FHLMC, FHA OR VA USE)

© 1994 Wolters Kluwer Financial Services - Bankers Systems TM
Form USBOCP-DT-NV 9/7/2006

(page 1 of 7)

DRE

2. **CONVEYANCE.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (defined on page 2) and Grantor's performance under this Security Instrument, Grantor irrevocably grants, bargains, conveys and sells to Trustee, in trust for the benefit of Lender, with power of sale, the following described property *(if property description is in metes and bounds the name and mailing address of the person who prepared the legal description must be included)* :
See attached Exhibit "A"

The property is located in ..CLARK COUNTY..... at
(County)
..4254.ROLLINGSTONE DR ..LAS VEGAS....., Nevada ..89103-3407...
(Address) (City) (ZIP Code)

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, all water and riparian rights, ditches, and water stock and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property").

3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount secured by this Security Instrument at any one time shall not exceed \$..50,000.00..... . This limitation of amount does not include interest and other fees and charges validly made pursuant to this Security Instrument. Also, this limitation does not apply to advances made under the terms of this Security Instrument to protect Lender's security and to perform any of the covenants contained in this Security Instrument.
4. **SECURED DEBT AND FUTURE ADVANCES.** The term "Secured Debt" is defined as follows:
- A. Debt incurred under the terms of all promissory note(s), contract(s), guaranty(ies) or other evidence of debt described below and all their extensions, renewals, modifications or substitutions. *(You must specifically identify the debt(s) secured and you should include the final maturity date of such debt(s).)*
Borrower(s): GEORGE R. EDWARDS
Principal/Maximum Line Amount: 50,000.00
Maturity Date: 03/02/2034
Note Date: 03/03/2009
- B. All future advances from Lender to Grantor or other future obligations of Grantor to Lender under any promissory note, contract, guaranty, or other evidence of debt executed by Grantor in favor of Lender after this Security Instrument whether or not this Security Instrument is specifically referenced. If more than one person signs this Security Instrument, each Grantor agrees that this Security Instrument will secure all future advances and future obligations that are given to or incurred by any one or more Grantor, or any one or more Grantor and others. **Future advances are contemplated and are governed by the provisions of NRS 106.300 to 106.400, inclusive.** All future advances and other future obligations are secured by this Security Instrument even though all or part may not yet be advanced. All future advances and other future obligations are secured as if made on the date of this Security Instrument. Nothing in this Security Instrument shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment must be agreed to in a separate writing.

(page 2 of 7)

- C. All other obligations Grantor owes to Lender, which may later arise, to the extent not prohibited by law, including, but not limited to, liabilities for overdrafts relating to any deposit account agreement between Grantor and Lender.
- D. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Security Instrument.

In the event that Lender fails to provide any required notice of the right of rescission, Lender waives any subsequent security interest in Grantor's principal dwelling that is created by this Security Instrument.

5. **DEED OF TRUST COVENANTS.** Grantor agrees that the covenants in this section are material obligations under the Secured Debt and this Security Instrument. If Grantor breaches any covenant in this section, Lender may refuse to make additional extensions of credit and reduce the credit limit. By not exercising either remedy on Grantor's breach, Lender does not waive Lender's right to later consider the event a breach if it happens again.

Payments. Grantor agrees that all payments under the Secured Debt will be paid when due and in accordance with the terms of the Secured Debt and this Security Instrument.

Prior Security Interests. With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Grantor agrees to make all payments when due and to perform or comply with all covenants. Grantor also agrees not to allow any modification or extension of, nor to request any future advances under any note or agreement secured by the lien document without Lender's prior written approval.

Claims Against Title. Grantor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Grantor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Grantor's payment. Grantor will defend title to the Property against any claims that would impair the lien of this Security Instrument. Grantor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses Grantor may have against parties who supply labor or materials to maintain or improve the Property.

Property Condition, Alterations and Inspection. Grantor will keep the Property in good condition and make all repairs that are reasonably necessary. Grantor shall not commit or allow any waste, impairment, or deterioration of the Property. Grantor agrees that the nature of the occupancy and use will not substantially change without Lender's prior written consent. Grantor will not permit any change in any license, restrictive covenant or easement without Lender's prior written consent. Grantor will notify Lender of all demands, proceedings, claims, and actions against Grantor, and of any loss or damage to the Property.

Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Lender shall give Grantor notice at the time of or before an inspection specifying a reasonable purpose for the inspection. Any inspection of the Property shall be entirely for Lender's benefit and Grantor will in no way rely on Lender's inspection.

Authority to Perform. If Grantor fails to perform any duty or any of the covenants contained in this Security Instrument, Lender may, without notice, perform or cause them to be performed. Grantor appoints Lender as attorney in fact to sign Grantor's name or pay any amount necessary for performance. Lender's right to perform for Grantor shall not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Security Instrument.

Leaseholds; Condominiums; Planned Unit Developments. Grantor agrees to comply with the provisions of any lease if this Security Instrument is on a leasehold. If the Property includes a unit in a condominium or a planned unit development, Grantor will perform all of Grantor's duties under the covenants, by-laws, or regulations of the condominium or planned unit development.

Condemnation. Grantor will give Lender prompt notice of any pending or threatened action, by private or public entities to purchase or take any or all of the Property through condemnation, eminent domain, or any other means. Grantor authorizes Lender to intervene in Grantor's name in any of the above described actions or claims. Grantor assigns to Lender the proceeds of any

(page 3 of 7)

award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Security Instrument. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

Insurance. Grantor shall keep Property insured against loss by fire, flood, theft and other hazards and risks reasonably associated with the Property due to its type and location. This insurance shall be maintained in the amounts and for the periods that Lender requires. What Lender requires pursuant to the preceding two sentences can change during the term of the Secured Debt. The insurance carrier providing the insurance shall be chosen by Grantor subject to Lender's approval, which shall not be unreasonably withheld. If Grantor fails to maintain the coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property according to the terms of this Security Instrument.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard "mortgage clause" and, where applicable, "loss payee clause." Grantor shall immediately notify Lender of cancellation or termination of the insurance. Lender shall have the right to hold the policies and renewals. If Lender requires, Grantor shall immediately give to Lender all receipts of paid premiums and renewal notices. Upon loss, Grantor shall give immediate notice to the insurance carrier and Lender. Lender may make proof of loss if not made immediately by Grantor.

Unless otherwise agreed in writing, all insurance proceeds shall be applied to the restoration or repair of the Property or to the Secured Debt, whether or not then due, at Lender's option. Any application of proceeds to principal shall not extend or postpone the due date of the scheduled payment nor change the amount of any payment. Any excess will be paid to the Grantor. If the Property is acquired by Lender, Grantor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Lender to the extent of the Secured Debt immediately before the acquisition.

Financial Reports and Additional Documents. Grantor will provide to Lender upon request, any financial statement or information Lender may deem reasonably necessary. Grantor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Grantor's obligations under this Security Instrument and Lender's lien status on the Property.

6. **WARRANTY OF TITLE.** Grantor warrants that Grantor is or will be lawfully seized of the estate conveyed by this Security Instrument and has the right to irrevocably grant, bargain, convey and sell the Property to Trustee, in trust, with power of sale. Grantor also warrants that the Property is unencumbered, except for encumbrances of record.
7. **DUE ON SALE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, a transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable.
8. **DEFAULT.** Grantor will be in default if any of the following occur:
 - Fraud.** Any Consumer Borrower engages in fraud or material misrepresentation in connection with the Secured Debt that is an open end home equity plan.
 - Payments.** Any Consumer Borrower on any Secured Debt that is an open end home equity plan fails to make a payment when due.
 - Property.** Any action or inaction by the Borrower or Grantor occurs that adversely affects the Property or Lender's rights in the Property. This includes, but is not limited to, the following:
 - (a) Grantor fails to maintain required insurance on the Property;
 - (b) Grantor transfers the Property;
 - (c) Grantor commits waste or otherwise destructively uses or fails to maintain the Property such that the action or inaction adversely affects Lender's security;
 - (d) Grantor fails to pay taxes on the Property or otherwise fails to act and thereby causes a lien to be filed against the Property that is senior to the lien of this Security Instrument;
 - (e) a sole Grantor dies;
 - (f) if more than one Grantor, any Grantor dies and Lender's security is adversely affected;
 - (g) the Property is taken through eminent domain;
 - (h) a judgment is filed against Grantor and subjects Grantor and the Property to action that adversely affects Lender's interest; or
 - (i) a prior lienholder forecloses on the Property and as a result, Lender's interest is adversely affected.

(page 4 of 7)

Executive Officers. Any Borrower is an executive officer of Lender or an affiliate and such Borrower becomes indebted to Lender or another lender in an aggregate amount greater than the amount permitted under federal laws and regulations.

9. **REMEDIES ON DEFAULT.** In addition to any other remedy available under the terms of this Security Instrument, Lender may accelerate the Secured Debt and foreclose this Security Instrument in a manner provided by law if Grantor is in default. In some instances, federal and state law will require Lender to provide Grantor with notice of the right to cure, or other notices and may establish time schedules for foreclosure actions.

At the option of the Lender, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable, after giving notice if required by law, upon the occurrence of a default or anytime thereafter. Lender shall be entitled to, without limitation, the power to sell the Property.

If there is a default, Trustee shall, at the request of Lender, advertise and sell the Property as a whole or in separate parcels at public auction to the highest bidder for cash and convey absolute title free and clear of all right, title and interest of Grantor at such time and place as Trustee designates. Trustee shall give notice of sale, including the time, terms and place of sale and a description of the Property to be sold as required by the applicable law.

Upon the sale of the Property and to the extent not prohibited by law, Trustee shall make and deliver a deed to the Property sold which conveys absolute title to the purchaser, and after first paying all fees, charges, and costs, shall pay to Lender all moneys advanced for repairs, taxes, insurance, liens, assessments and prior encumbrances and interest thereon, and the principal and interest on the Secured Debt, paying the surplus, if any, to Grantor. Lender may purchase the Property. The recitals in any deed of conveyance shall be prima facie evidence of the facts set forth therein.

The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require complete cure of any existing default. By not exercising any remedy on Grantor's default, Lender does not waive Lender's right to later consider the event a default if it happens again.

10. **EXPENSES; ADVANCES ON COVENANTS; ATTORNEYS' FEES; COLLECTION COSTS.** If Grantor breaches any covenant in this Security Instrument, Grantor agrees to pay all expenses Lender incurs in performing such covenants or protecting its security interest in the Property. Such expenses include, but are not limited to, fees incurred for inspecting, preserving, or otherwise protecting the Property and Lender's security interest. These expenses are payable on demand and will bear interest from the date of payment until paid in full at the highest rate of interest in effect as provided in the terms of the Secured Debt. Grantor agrees to pay all costs and expenses incurred by Lender in collecting, enforcing or protecting Lender's rights and remedies under this Security Instrument. This amount may include, but is not limited to, attorneys' fees, court costs, and other legal expenses. To the extent permitted by the United States Bankruptcy Code, Grantor agrees to pay the reasonable attorneys' fees Lender incurs to collect the Secured Debt as awarded by any court exercising jurisdiction under the Bankruptcy Code. This Security Instrument shall remain in effect until released. Grantor agrees to pay for any recordation costs of such release.

11. **ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES.** As used in this section, (1) Environmental Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), and all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substances," "hazardous waste" or "hazardous substance" under any Environmental Law.

(page 5 of 7)

[Signature]

Grantor represents, warrants and agrees that:

- A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance is or will be located, stored or released on or in the Property. This restriction does not apply to small quantities of Hazardous Substances that are generally recognized to be appropriate for the normal use and maintenance of the Property.
 - B. Except as previously disclosed and acknowledged in writing to Lender, Grantor and every tenant have been, are, and shall remain in full compliance with any applicable Environmental Law.
 - C. Grantor shall immediately notify Lender if a release or threatened release of a Hazardous Substance occurs on, under or about the Property or there is a violation of any Environmental Law concerning the Property. In such an event, Grantor shall take all necessary remedial action in accordance with any Environmental Law.
 - D. Grantor shall immediately notify Lender in writing as soon as Grantor has reason to believe there is any pending or threatened investigation, claim, or proceeding relating to the release or threatened release of any Hazardous Substance or the violation of any Environmental Law.
12. **ESCROW FOR TAXES AND INSURANCE.** Unless otherwise provided in a separate agreement, Grantor will not be required to pay to Lender funds for taxes and insurance in escrow.
13. **JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND.** All duties under this Security Instrument are joint and individual. If Grantor signs this Security Instrument but does not sign an evidence of debt, Grantor does so only to mortgage Grantor's interest in the Property to secure payment of the Secured Debt and Grantor does not agree to be personally liable on the Secured Debt. If this Security Instrument secures a guaranty between Lender and Grantor, Grantor agrees to waive any rights that may prevent Lender from bringing any action or claim against Grantor or any party indebted under the obligation. These rights may include, but are not limited to, any anti-deficiency or one-action laws. The duties and benefits of this Security Instrument shall bind and benefit the successors and assigns of Grantor and Lender.
14. **SEVERABILITY; INTERPRETATION.** This Security Instrument is complete and fully integrated. This Security Instrument may not be amended or modified by oral agreement. Any section in this Security Instrument, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement. If any section of this Security Instrument cannot be enforced according to its terms, that section will be severed and will not affect the enforceability of the remainder of this Security Instrument. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Security Instrument are for convenience only and are not to be used to interpret or define the terms of this Security Instrument. Time is of the essence in this Security Instrument.
15. **SUCCESSOR TRUSTEE.** Lender, at Lender's option, may from time to time remove Trustee and appoint a successor trustee without any other formality than the designation in writing. The successor trustee, without conveyance of the Property, shall succeed to all the title, power and duties conferred upon Trustee by this Security Instrument and applicable law.
16. **NOTICE.** Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Security Instrument, or to any other address designated in writing. Notice to one grantor will be deemed to be notice to all grantors.
17. **WAIVERS.** Except to the extent prohibited by law, Grantor waives all appraisement and homestead exemption rights relating to the Property.
18. **LINE OF CREDIT.** The Secured Debt includes a revolving line of credit. Although the Secured Debt may be reduced to a zero balance, this Security Instrument will remain in effect until released.

(page 6 of 7)

ENE _____

19. **APPLICABLE LAW.** This Security Instrument is governed by the laws as agreed to in the Secured Debt, except to the extent required by the laws of the jurisdiction where the Property is located, and applicable federal laws and regulations.
20. **RIDERS.** The covenants and agreements of each of the riders checked below are incorporated into and supplement and amend the terms of this Security Instrument.
[Check all applicable boxes]
☐ Assignment of Leases and Rents ☐ Other
21. ☐ **ADDITIONAL TERMS.**

SIGNATURES: By signing below, Grantor agrees to the terms and covenants contained in this Security Instrument and in any attachments. Grantor also acknowledges receipt of a copy of this Security Instrument on the date stated on page 1.

George R Edwards 3/3/09
(Signature) GEORGE R. EDWARDS (Date) (Signature) (Date)

ACKNOWLEDGMENT: Nevada, COUNTY OF Clark
STATE OF, COUNTY OF
This instrument was acknowledged before me this 9th day of March, 2009
(Individual) by GEORGE R. EDWARDS, UNMARRIED

My commission expires: Sept. 19, 2012
Debra A. Grusman
(Notary Public)
Customer Service Manager
(Title and Rank)

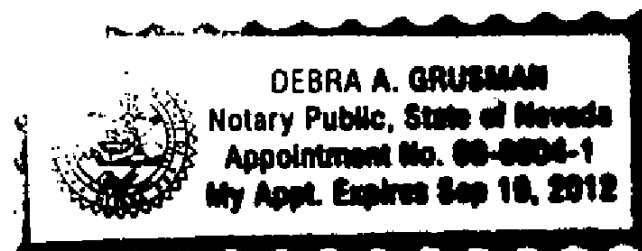


EXHIBIT "A" LEGAL DESCRIPTION

Account #: 14560224
Order Date : 02/27/2009
Reference : 20090581626510
Name : GEORGE R. EDWARDS
Deed Ref : 20020712928

Index #:
Parcel #: 163-24-111-021

SITUATED IN THE STATE OF NEVADA, COUNTY OF CLARK:

**LOT NINETEEN (19) OF GLENVIEW WEST TOWNHOME, AS SHOWN BY MAP THEREOF ON
FILE IN BOOK 30 OF PLATS, PAGE 65, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK
COUNTY, NEVADA.**

**SUBJECT TO ALL EASEMENTS, COVENANTS, CONDITIONS, RESERVATIONS, LEASES AND
RESTRICTIONS OF RECORD, ALL LEGAL HIGHWAYS, ALL RIGHTS OF WAY, ALL ZONING,
BUILDING AND OTHER LAWS, ORDINANCES AND REGULATIONS, ALL RIGHTS OF TENANTS IN
POSSESSION, AND ALL REAL ESTATE TAXES AND ASSESSMENTS NOT YET DUE AND PAYABLE.**

**BEING THE SAME PROPERTY CONVEYED BY DEED RECORDED IN DOCUMENT NO. 20020712928,
OF THE CLARK COUNTY, NEVADA RECORDS.**

EXHIBIT D

EXHIBIT D

DAVID ALESSI*
THOMAS BAYARD*
ROBERT KOENIG**
RYAN KERBOW***

* Admitted to the California Bar

** Admitted to the California, Nevada
and Colorado Bar

*** Admitted to the Nevada and California Bar



A Multi-Jurisdictional Law Firm

9500 W. Flamingo Road, Suite 100
Las Vegas, Nevada 89147
Telephone: 702-222-4033
Facsimile: 702-222-4043
www.alessikoenig.com

ADDITIONAL OFFICES

AGOURA HILLS CA
PHONE: 818-735-9600

RENO NV
PHONE: 775-626-2323

DIAMOND BAR CA
PHONE: 909-861-8300

December 20, 2010

LIEN LETTER

VIA REGULAR AND CERTIFIED MAIL

EDWARDS GEORGE R TRUST
4254 ROLLINGSTONE DR
LAS VEGAS, NV 89103

Re: Glenview West Townhomes Association/4254 ROLLINGSTONE DR/HO #24230

Dear EDWARDS GEORGE R TRUST :

Our office has been retained by Glenview West Townhomes Association to collect the past due assessment balance on your account. Please find the enclosed Notice of Delinquent Assessment (Lien), signed and dated on behalf of Glenview West Townhomes Association on December 20, 2010. The total amount due by January 24, 2011 is \$2,460.00. Please note that the total amount due may differ from the amount shown on the enclosed lien. Please submit payment to our Nevada mailing address listed above by January 24, 2011. Payment must be in the form of a cashier's check or money order and made payable to Alessi & Koenig.

Unless you, within thirty days after receipt of this notice, dispute the validity of this debt, or any portion thereof, our office will assume the debt is valid. If you notify our office in writing within the thirty-day period that the debt, or any portion thereof, is disputed, we will obtain verification of the debt and a copy of such verification will be mailed to you. Upon receipt of your written request within the thirty-day period, we will provide you with the name and address of the original creditor, if different from the current creditor. Please note the law does not require me to wait until the end of the thirty-day period before proceeding to the next step in the collection process. If, however, you request proof of the debt or the name and address of the original creditor within the thirty-day period that begins to suspend my efforts to collect the debt until I mail to you have the right to inspect the association records.

In the event Alessi & Koenig, LLC does not recover the costs of \$2,460.00 by January 24, 2011, a Notice of Eminent Domain, resulting in additional fees and costs. Should you fail to pay the debt, we will seek ownership of your property.

Sincerely,

ALESSI & KOENIG

Please be advised that Alessi & Koenig, LLC is a debt collector. Any communication obtained will be used for collection purposes only.

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	

Total Postage

EDWARDS GEORGE R TRUST
4254 ROLLINGSTONE DR.
LAS VEGAS, NV 89103

Sent To
Street, Apt. #
or PO Box #
City, State, ZIP

A&K000015

USB0046

When recorded return to:

ALESSI & KOENIG, LLC
9500 W. Flamingo Rd., Suite 100
Las Vegas, Nevada 89147
Phone: (702) 222-4033

A.P.N. 163-24-111-021

Trustee Sale # 24230-4254

NOTICE OF DELINQUENT ASSESSMENT (LIEN)

In accordance with Nevada Revised Statutes and the Association's Declaration of Covenants, Conditions and Restrictions (CC&Rs) of the official records of Clark County, Nevada, **Glenview West Townhomes Association** has a lien on the following legally described property.

The property against which the lien is imposed is commonly referred to as **4254 ROLLINGSTONE DR, LAS VEGAS, NV 89103** and more particularly legally described as: **LOT 19 Book 30 Page 65** in the County of Clark.

The owner(s) of record as reflected on the public record as of today's date is (are): **EDWARDS GEORGE R TRUST**

The mailing address(es) is: **4254 ROLLINGSTONE DR, LAS VEGAS, NV 89103**

The total amount due through today's date is: **\$2,330.00**. Of this total amount **\$2,280.00** represent Collection and/or Attorney fees, assessments, interest, late fees and service charges. **\$50.00** represent collection costs. Note: Additional monies shall accrue under this claim at the rate of the claimant's regular monthly or special assessments, plus permissible late charges, costs of collection and interest, accruing subsequent to the date of this notice.

Date: **December 20, 2010**

By:

Mary Indalecio - Legal Assistant

Alessi & Koenig, LLC on behalf of Glenview West Townhomes Association

State of Nevada

County of Clark

SUBSCRIBED and SWORN before me December 20, 2010

(Seal)

(Signature)

NOTARY PUBLIC

A&K000016

USB0047

EXHIBIT E

EXHIBIT E

Inst #: 201101040005412
Fees: \$14.00
N/C Fee: \$0.00
01/04/2011 09:46:04 AM
Receipt #: 631834
Requestor:
ALESSI & KOENIG LLC (JUNES
Recorded By: BGN Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded return to:

ALESSI & KOENIG, LLC
9500 W. Flamingo Rd., Suite 100
Las Vegas, Nevada 89147
Phone: (702) 222-4033

A.P.N. 163-24-111-021

Trustee Sale # 24230-4254

NOTICE OF DELINQUENT ASSESSMENT (LIEN)

In accordance with Nevada Revised Statutes and the Association's Declaration of Covenants, Conditions and Restrictions (CC&Rs) of the official records of **Clark** County, Nevada, **Glenview West Townhomes Association** has a lien on the following legally described property.

The property against which the lien is imposed is commonly referred to as **4254 ROLLINGSTONE DR**, **LAS VEGAS, NV 89103** and more particularly legally described as: **LOT 19 Book 30 Page 65** in the County of **Clark**.

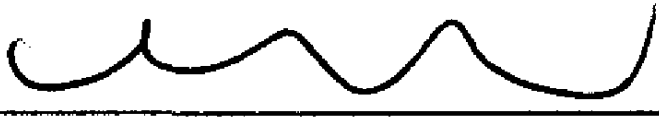
The owner(s) of record as reflected on the public record as of today's date is (are): **EDWARDS GEORGE R TRUST**

The mailing address(es) is: **4254 ROLLINGSTONE DR, LAS VEGAS, NV 89103**

The total amount due through today's date is: **\$2,330.00**. Of this total amount **\$2,280.00** represent Collection and/or Attorney fees, assessments, interest, late fees and service charges. **\$50.00** represent collection costs. Note: Additional monies shall accrue under this claim at the rate of the claimant's regular monthly or special assessments, plus permissible late charges, costs of collection and interest, accruing subsequent to the date of this notice.

Date: **December 20, 2010**

By:


Mary Indalecio – Legal Assistant

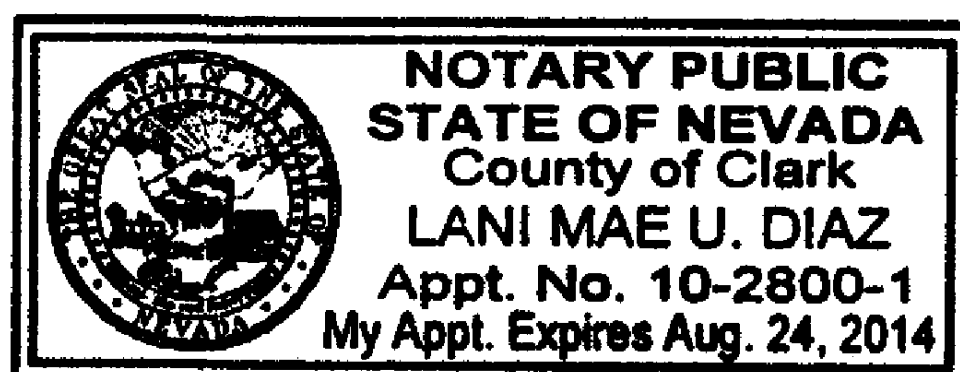
Alessi & Koenig, LLC on behalf of **Glenview West Townhomes Association**

State of Nevada

County of Clark

SUBSCRIBED and SWORN before me ²⁶December 20, 2010

(Seal)



(Signature)


NOTARY PUBLIC

EXHIBIT F

EXHIBIT F

AR0857

GLENVIEW WEST TOWNHOMES ASSN.
FINANCIAL TRANSACTIONS - 07/10/12

4254 ROLLING STONE
4254 rollingstone trust

Unit ID: 4254
STATUS: 60 - Atty. to FC
PREPAID BAL: 0.00

TXN	PAYMENTS/TRXN DESCR				CHARGES/PAYMENT DISTR						
BALANCE	DATE	PAYMT	AMT	CHECK #	DEP	DT	CODE	N/A	DESCRIPTION	AMOUNT	DUE
	042205	131.00		5067	042205		PP		Credit-Prepaid	(131.00)	
(131.00)											
	113006	121.00		INIT CREDIT BAL			PP		Credit-Prepaid	(121.00)	
(252.00)											
	120106			APPLY CHARGES			A1		ASSESSMENT	121.00	
(131.00)											
	120106			APPLY PREPAYMNT			A1		ASSESSMENT	(121.00)	
(131.00)											
	121106	121.00		5048	121106		PP		Credit-Prepaid	(121.00)	
(252.00)											
	010107			APPLY CHARGES			A1		ASSESSMENT	121.00	
(131.00)											
	020107			APPLY CHARGES			A1		ASSESSMENT	121.00	
(10.00)											
	020107			APPLY PREPAYMNT			A1		ASSESSMENT	(121.00)	
(10.00)											
	022007	131.00		5052	022007		A1		ASSESSMENT	(121.00)	
(141.00)											
	022007						PP		Credit-Prepaid	(10.00)	
	030107			APPLY CHARGES			A1		ASSESSMENT	121.00	
(20.00)											
	030107			APPLY PREPAYMNT			A1		ASSESSMENT	(10.00)	
(20.00)											
	031307	131.00		5053	031307		A1		ASSESSMENT	(111.00)	
(151.00)											
	031307						PP		Credit-Prepaid	(20.00)	
	032807	131.00		54	032807		PP		Credit-Prepaid	(131.00)	
(282.00)											
	040107			APPLY CHARGES			A1		ASSESSMENT	121.00	
(161.00)											
	040107			APPLY PREPAYMNT			A1		ASSESSMENT	(121.00)	
(161.00)											
	050107			APPLY CHARGES			A1		ASSESSMENT	121.00	
(40.00)											
	050107			APPLY PREPAYMNT			A1		ASSESSMENT	(121.00)	
(40.00)											
	050207	131.00		5055	050207		PP		Credit-Prepaid	(131.00)	
(171.00)											
	051807	131.00		5056	051807		PP		Credit-Prepaid	(131.00)	
(302.00)											
	060107			APPLY CHARGES			A1		ASSESSMENT	121.00	

Page 1

A&K000063

USB0094

		AR0857			
(181.00)					
060107	APPLY PREPAYMNT	A1	ASSESSMENT	(121.00)	
(181.00)					
070107	APPLY CHARGES	A1	ASSESSMENT	121.00	
(60.00)					
070107	APPLY PREPAYMNT	A1	ASSESSMENT	(121.00)	
(60.00)					
070607	131.00 5057	070607 PP	Credit-Prepaid	(131.00)	
(191.00)					
072507	131.00 5058	072507 PP	Credit-Prepaid	(131.00)	
(322.00)					
080107	APPLY CHARGES	A1	ASSESSMENT	121.00	
(201.00)					
080107	APPLY PREPAYMNT	A1	ASSESSMENT	(121.00)	
(201.00)					
081707	131.00 59	081707 PP	Credit-Prepaid	(131.00)	
(332.00)					
090107	APPLY CHARGES	A1	ASSESSMENT	121.00	
(211.00)					
090107	APPLY PREPAYMNT	A1	ASSESSMENT	(121.00)	
(211.00)					
100107	APPLY CHARGES	A1	ASSESSMENT	121.00	
(90.00)					
100407	131.00 5060	100407 PP	Credit-Prepaid	(131.00)	
(221.00)					
100407	131.00 5060	100407 PP	Credit-Prepaid	(131.00)	
(352.00)					
110107	APPLY CHARGES	A1	ASSESSMENT	121.00	
(231.00)					
120107	APPLY CHARGES	A1	ASSESSMENT	121.00	
(110.00)					
122007	262.00 61-62	122007 PP	Credit-Prepaid	(262.00)	
(372.00)					
010108	APPLY CHARGES	A1	ASSESSMENT	121.00	
(251.00)					
012308	131.00 0000005063	012308 PP	Credit-Prepaid	(131.00)	
(382.00)					
012308	131.00 5064	012308 PP	Credit-Prepaid	(131.00)	
(513.00)					
020108	APPLY CHARGES	A1	ASSESSMENT	121.00	
(392.00)					
020108	APPLY PREPAYMNT	A1	ASSESSMENT	(605.00)	
(392.00)					
022008	131.00 50065	022008 PP	Credit-Prepaid	(131.00)	
(523.00)					
030108	APPLY CHARGES	A1	ASSESSMENT	121.00	
(402.00)					
030108	APPLY PREPAYMNT	A1	ASSESSMENT	(121.00)	
(402.00)					
040108	APPLY CHARGES	A1	ASSESSMENT	121.00	
(281.00)					
040108	APPLY PREPAYMNT	A1	ASSESSMENT	(121.00)	
(281.00)					

AR0857

050108 (160.00)	APPLY CHARGES	A1	ASSESSMENT	121.00
050108 (160.00)	APPLY PREPAYMNT	A1	ASSESSMENT	(121.00)
050608 (291.00)	131.00 68	050608 PP	Credit-Prepaid	(131.00)
060108 (170.00)	APPLY CHARGES	A1	ASSESSMENT	121.00
060108 (170.00)	APPLY PREPAYMNT	A1	ASSESSMENT	(121.00)
070108 (49.00)	APPLY CHARGES	A1	ASSESSMENT	121.00
070108 (49.00)	APPLY PREPAYMNT	A1	ASSESSMENT	(121.00)
071108 (180.00)	131.00 74	071108 PP	Credit-Prepaid	(131.00)
072008 (311.00)	131.00 66	072008 PP	Credit-Prepaid	(131.00)
080108 (190.00)	APPLY CHARGES	A1	ASSESSMENT	121.00
080108 (190.00)	APPLY PREPAYMNT	A1	ASSESSMENT	(121.00)
081108 (321.00)	131.00 5077	081108 PP	Credit-Prepaid	(131.00)
090108 (200.00)	APPLY CHARGES	A1	ASSESSMENT	121.00
090108 (200.00)	APPLY PREPAYMNT	A1	ASSESSMENT	(121.00)
100108 (79.00)	APPLY CHARGES	A1	ASSESSMENT	121.00
100108 (79.00)	APPLY PREPAYMNT	A1	ASSESSMENT	(121.00)
103008 (210.00)	131.00 5080	103008 PP	Credit-Prepaid	(131.00)
103008 (341.00)	131.00 5083	103008 PP	Credit-Prepaid	(131.00)
110108 (220.00)	APPLY CHARGES	A1	ASSESSMENT	121.00
110108 (220.00)	APPLY PREPAYMNT	A1	ASSESSMENT	(121.00)
113008 (351.00)	131.00 5086	113008 PP	Credit-Prepaid	(131.00)
120108 (230.00)	APPLY CHARGES	A1	ASSESSMENT	121.00
120108 (230.00)	APPLY PREPAYMNT	A1	ASSESSMENT	(121.00)
010109 (100.00)	APPLY CHARGES	A1	ASSESSMENT	130.00
010109 (100.00)	APPLY PREPAYMNT	A1	ASSESSMENT	(130.00)
012909 (231.00)	131.00 5089	012909 PP	Credit-Prepaid	(131.00)
013009 (362.00)	131.00 92	013009 A1	ASSESSMENT	(131.00)

AR0857

----- 020109 (232.00) 020109 (232.00) 022709 (362.00) 022709 (493.00) -----	APPLY CHARGES	A1	ASSESSMENT	130.00
	APPLY PREPAYMNT	A1	ASSESSMENT	(130.00)
130.00 124	022709	A1	ASSESSMENT	(130.00)
131.00 5094	022709	A1	ASSESSMENT	(131.00)
----- 030109 (363.00) 030109 (363.00) 033009 (494.00) 033009 -----	APPLY CHARGES	A1	ASSESSMENT	130.00
	APPLY PREPAYMNT	A1	ASSESSMENT	(101.00)
131.00 5097	033009	A1	ASSESSMENT	(27.00)
		PP	Credit-Prepaid	(104.00)
----- 040109 (364.00) 043009 (495.00) -----	APPLY CHARGES	A1	ASSESSMENT	130.00
131.00 5101	043009	PP	Credit-Prepaid	(131.00)
----- 050109 (365.00) 053009 (496.00) -----	APPLY CHARGES	A1	ASSESSMENT	130.00
131.00 106	053009	PP	Credit-Prepaid	(131.00)
----- 060109 (366.00) -----	APPLY CHARGES	A1	ASSESSMENT	130.00
----- 070109 (236.00) 070109 (236.00) 071509 (367.00) 071509 (498.00) -----	APPLY CHARGES	A1	ASSESSMENT	130.00
	APPLY PREPAYMNT	A1	ASSESSMENT	(130.00)
131.00 5108	071509	PP	Credit-Prepaid	(131.00)
131.00 5102	071509	PP	Credit-Prepaid	(131.00)
131.00 0	080109	PP	Credit-Prepaid	(131.00)
----- 080109 (629.00) 080109 (499.00) 080109 (499.00) -----	APPLY CHARGES	A1	ASSESSMENT	130.00
	APPLY PREPAYMNT	A1	ASSESSMENT	(130.00)
----- 090109 (369.00) 090109 (369.00) -----	APPLY CHARGES	A1	ASSESSMENT	130.00
	APPLY PREPAYMNT	A1	ASSESSMENT	(130.00)
----- 100109 (239.00) 100109 (239.00) 102209 (370.00) -----	APPLY CHARGES	A1	ASSESSMENT	130.00
	APPLY PREPAYMNT	A1	ASSESSMENT	(130.00)
131.00 118	102209	PP	Credit-Prepaid	(131.00)
----- 110109 (240.00) 110109 (240.00) -----	APPLY CHARGES	A1	ASSESSMENT	130.00
	APPLY PREPAYMNT	A1	ASSESSMENT	(130.00)

AR0857				
----- 120109 (110.00) 120109 (110.00) 123009 0.00 -----	APPLY CHARGES	A1	ASSESSMENT	130.00
	APPLY PREPAYMNT	A1	ASSESSMENT	(130.00)
	EXPENSE ADJ	A1	ASSESSMENT	110.00
----- 010110 130.00 010110 130.00 -----	APPLY CHARGES	A1	ASSESSMENT	130.00
	APPLY PREPAYMNT	A1	ASSESSMENT	(110.00)
----- 020110 260.00 -----	APPLY CHARGES	A1	ASSESSMENT	130.00
----- 030110 390.00 033010 400.00 -----	APPLY CHARGES	A1	ASSESSMENT	130.00
	APPLY LATE FEE	01	Late Fees	10.00
----- 040110 530.00 -----	APPLY CHARGES	A1	ASSESSMENT	130.00
----- 050110 660.00 -----	APPLY CHARGES	A1	ASSESSMENT	130.00
----- 060110 790.00 -----	APPLY CHARGES	A1	ASSESSMENT	130.00
----- 070110 920.00 -----	APPLY CHARGES	A1	ASSESSMENT	130.00
----- 080110 1050.00 -----	APPLY CHARGES	A1	ASSESSMENT	130.00
----- 090110 1180.00 -----	APPLY CHARGES	A1	ASSESSMENT	130.00
----- 100110 1310.00 -----	APPLY CHARGES	A1	ASSESSMENT	130.00
----- 110110 1440.00 -----	APPLY CHARGES	A1	ASSESSMENT	130.00
----- 120110 1570.00 -----	APPLY CHARGES	A1	ASSESSMENT	130.00
----- 010111 1700.00 -----	APPLY CHARGES	A1	ASSESSMENT	130.00
----- 020111 1830.00 -----	APPLY CHARGES	A1	ASSESSMENT	130.00
----- 030111 1960.00 032911 Action taken: 60 - Atty. to FC 032911 2110.00 -----	APPLY CHARGES	A1	ASSESSMENT	130.00
	APPLY ADMIN FEE	03	Admin. Fees	150.00
----- 040111 2240.00 -----	APPLY CHARGES	A1	ASSESSMENT	130.00

050111 2370.00	APPLY CHARGES	A1	AR0857 ASSESSMENT	130.00
060111 2500.00	APPLY CHARGES	A1	ASSESSMENT	130.00
070111 2630.00	APPLY CHARGES	A1	ASSESSMENT	130.00
080111 2760.00	APPLY CHARGES	A1	ASSESSMENT	130.00
090111 2890.00	APPLY CHARGES	A1	ASSESSMENT	130.00
100111 3020.00	APPLY CHARGES	A1	ASSESSMENT	130.00
110111 3150.00	APPLY CHARGES	A1	ASSESSMENT	130.00
120111 3280.00	APPLY CHARGES	A1	ASSESSMENT	130.00
122811 2865.60	414.40 339	122811 A1	ASSESSMENT	(414.40)
010112 2995.60	APPLY CHARGES	A1	ASSESSMENT	130.00
020112 3125.60	APPLY CHARGES	A1	ASSESSMENT	130.00
022112 130.00	2995.60 65871 a les	022112 A1	ASSESSMENT	(2965.60)
022112		01	Late Fees	(10.00)
022112		03	Admin. Fees	(20.00)
030112 260.00	APPLY CHARGES	A1	ASSESSMENT	130.00
040112 390.00	APPLY CHARGES	A1	ASSESSMENT	130.00
050112 520.00	APPLY CHARGES	A1	ASSESSMENT	130.00
060112 650.00	APPLY CHARGES	A1	ASSESSMENT	130.00
070112 780.00	APPLY CHARGES	A1	ASSESSMENT	130.00

B A L A N C E S U M M A R Y

CHARGE CODE	DESCRIPTION	AMOUNT
A1	ASSESSMENT	650.00
03	Admin. Fees	130.00
	TOTAL:	780.00

Page 6

A&K000068

USB0099

AR0857

Page 7

A&K000069

USB0100

EXHIBIT G

EXHIBIT G

EDWARDS GEORGE R TRUST
4254 ROLLINGSTONE DR

LAS VEGAS, NV 89103

REPUBLIC SERVICES
ACCT# [REDACTED] 308
PO BOX 98508
LAS VEGAS, NV 89193-8508

US RECORDINGS
2925 COUNTRY DRIVE STE. 201

ST. PAUL, MN 55117

LAW OFFICE OF AJ KUN, LTD
1020 GARCES AVE, STE 200

LAS VEGAS, NV 89101

ROBERT HAZELL
14883 MAMMOTH PL

FONTANA, CA 92336

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only: No Insurance Coverage Provided)
For delivery information, visit our website at www.usps.com

OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	

7010 1670 0002 4330 7012
2602 DECH 2000 0247 0101

W. FLAMINGO ROAD 89147
APR 5 2011
POE

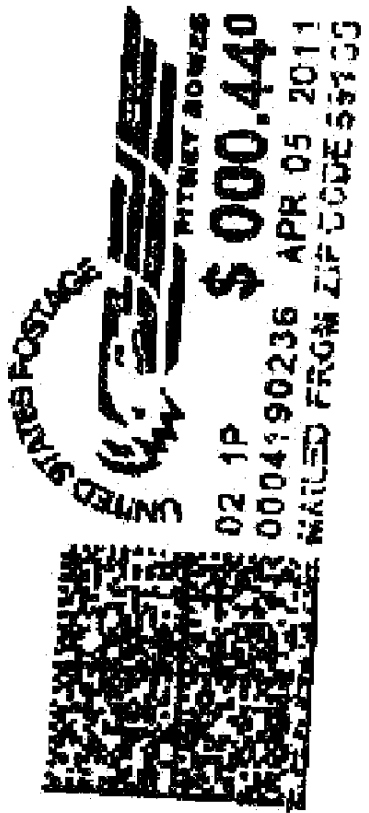
EDWARDS GEORGE R TRUST
4254 ROLLINGSTONE DR
LAS VEGAS, NV 89103

A&K000044

USB0075

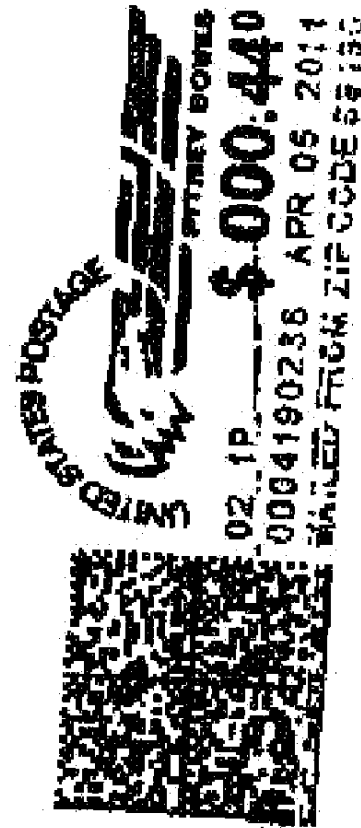
A&K
KONG
9500 W. Flamingo Rd. Suite 100
Las Vegas, NV 89147

ROBERT HAZELL
14883 MAMMOTH PL
FONTANA, CA 92336



A&K
KONG
9500 W. Flamingo Rd. Suite 100
Las Vegas, NV 89147

US RECORDINGS
2824 COUNTRY DRIVE STE. 201
ST. PAUL, MN 55117



A&K000045
USB0076

Inst #: 201103290002690
Fees: \$14.00
N/C Fee: \$0.00
03/29/2011 09:54:46 AM
Receipt #: 720898
Requestor:
ALESSI & KOENIG LLC (JUNES
Recorded By: EAH Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded mail to:

THE ALESSI & KOENIG, LLC
9500 West Flamingo Rd., Ste 100
Las Vegas, Nevada 89147
Phone: 702-222-4033

A.P.N. 163-24-111-021

Trustee Sale No. 24230-4254

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER HOMEOWNERS ASSOCIATION LIEN

WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE! You may have the right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. The sale may not be set until ninety days from the date this notice of default recorded, which appears on this notice. The amount due is \$3,800.00 as of March 2, 2011 and will increase until your account becomes current. To arrange for payment to stop the foreclosure, contact: **Glenview West Townhomes Association, c/o Alessi & Koenig, 9500 W. Flamingo Rd, Ste 100, Las Vegas, NV 89147.**

THIS NOTICE pursuant to that certain Assessment Lien, recorded on January 4, 2011 as document number 0005412, of Official Records in the County of Clark, State of Nevada. Owner(s): **EDWARDS GEORGE R TRUST**, of LOT 19, as per map recorded in Book 30, Pages 65, as shown on the Plan, Recorded on as document number as shown on the Subdivision map recorded in Maps of the County of Clark, State of Nevada. PROPERTY ADDRESS: **4254 ROLLINGSTONE DR, LAS VEGAS, NV 89103.** If you have any questions, you should contact an attorney. 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 The Alessi & Koenig is appointed trustee agent under the above referenced lien, dated January 4, 2011, executed by **Glenview West Townhomes Association** to secure assessment obligations in favor of said Association, pursuant to the terms contained in the Declaration of Covenants, Conditions, and Restrictions (CC&Rs). A default in the obligation for which said CC&Rs has occurred in that the payment(s) have not been made of homeowners assessments due from and all subsequent assessments, late charges, interest, collection and/or attorney fees and costs.

Dated: March 2, 2011

Mary Indalecio, Alessi & Koenig, LLC on behalf of Glenview West Townhomes Association

A&K000046

USB0077



9500 W. Flamingo Rd. Suite 100
Las Vegas, NV 89147

REPUBLIC SERVICES
ACC # 308
PO BOX 98508
LAS VEGAS, NV 89193-8508



9500 W. Flamingo Rd. Suite 100
Las Vegas, NV 89147



LAW OFFICE OF AJ KUN, LTD
1020 GARCES AVE STE 200
LAS VEGAS, NV 89101

A&K000047

USB0078

**See*

www.eppraisal.com

A&K000048

USB0079

EXHIBIT H

EXHIBIT H

Inst #: 201110130001535
Fees: \$14.00
N/C Fee: \$0.00
10/13/2011 09:49:20 AM
Receipt #: 945329
Requestor:
ALESSI & KOENIG LLC (JUNES
Recorded By: OSA Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded mail to:
Alessi & Koenig, LLC
9500 West Flamingo Rd., Suite 205
Las Vegas, NV 89147
Phone: 702-222-4033

APN: 163-24-111-021

TSN 24230-4254

NOTICE OF TRUSTEE'S 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 The Alessi & Koenig at 702-222-4033. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.

NOTICE IS HEREBY GIVEN THAT:

On November 16, 2011, Alessi & Koenig as duly appointed Trustee pursuant to a certain lien, recorded on January 4, 2011, as instrument number 0005412, of the official records of Clark County, Nevada, WILL SELL THE BELOW MENTIONED PROPERTY TO THE HIGHEST BIDDER FOR LAWFUL MONEY OF THE UNITED STATES, OR A CASHIERS CHECK at: 4:00 P.M. at 930 S. 4th Street, Las Vegas Nevada 89101.

The street address and other common designation, if any, of the real property described above is purported to be: **4254 ROLLINGSTONE DR, LAS VEGAS, NV 89103**. The owner of the real property is purported to be: **EDWARDS GEORGE R TRUST**

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designations, if any, shown herein. Said sale will be made, without covenant or warranty, expressed or implied, regarding title, possession or encumbrances, to pay the remaining principal sum of a note, homeowner's assessment or other obligation secured by this lien, with interest and other sum as provided therein: plus advances, if any, under the terms thereof and interest on such advances, plus fees, charges, expenses, of the Trustee and trust created by said lien. 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 **\$5,370.00**. Payment must be in cash, a cashier's check drawn on a state or national bank, a check drawn by a state bank or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in section 5102 of the Financial Code and authorized to do business in this state.

Date: September 16, 2011



By: Ryan Kerbow, Esq on behalf of Glenview West Townhomes Association

EXHIBIT I

EXHIBIT I

When recorded mail to:
Alessi & Koenig, LLC
9500 West Flamingo Rd., Suite 205
Las Vegas, NV 89147
Phone: 702-222-4033

APN: 163-24-111-021

TSN 24230-4254

NOTICE OF TRUSTEE'S 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 The Alessi & Koenig at 702-222-4033. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.

NOTICE IS HEREBY GIVEN THAT:

On November 16, 2011, Alessi & Koenig as duly appointed Trustee pursuant to a certain lien, recorded on January 4, 2011, as instrument number 0005412, of the official records of Clark County, Nevada, WILL SELL THE BELOW MENTIONED PROPERTY TO THE HIGHEST BIDDER FOR LAWFUL MONEY OF THE UNITED STATES, OR A CASHIERS CHECK at: 4:00 P.M. at 930 S. 4th Street, Las Vegas Nevada 89101.

The street address and other common designation, if any, of the real property described above is purported to be: 4254 ROLLINGSTONE DR, LAS VEGAS, NV 89103. The owner of the real property is purported to be: EDWARDS GEORGE R TRUST

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designations, if any, shown herein. Said sale will be made, without covenant or warranty, expressed or implied, regarding title, possession or encumbrances, to pay the remaining principal sum of a note, homeowner's assessment or other obligation secured by this lien, with interest and other sum as provided therein: plus advances, if any, under the terms thereof and interest on such advances, plus fees, charges, expenses, of the Trustee and trust created by said lien. 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 \$5,370.00. Payment must be in cash, a cashier's check drawn on a state or national bank, a check drawn by a state bank or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in section 5102 of the Financial Code and authorized to do business in this state.

Date: September 16, 2011



By: Ryan Kerbow, Esq on behalf of Glenview West Townhomes Association

A&K000049

USB0080

24230

GEORGE R. EDWARDS, TRUSTEE, GEOR
4254 ROLLINGSTONE DR

LAS VEGAS, NV 89103-3407

REPUBLIC SERVICES
ACCT# [REDACTED] 1308
PO BOX 98508
LAS VEGAS, NV 89103-8508

LAW OFFICES OF LES ZIEVE
T.S. NO. 10-11871
18377 BEACH BLVD, SUITE 210

HUNTINGTON BEACH, CA 92648

U.S. BANK TRUST COMPANY, NATIONAL
CLARK CO.NV INST NO. 20090328-
111 SW FIFTH AVE

PORTLAND, OR 97204

US RECORDINGS
CLARK CO.NV INST NO. 20090328-
2925 COUNTRY DRIVE STE. 201

ST. PAUL, MN 55117

LAW OFFICE OF AJ KUN, LTD
1020 GARCES AVE, STE 200

LAS VEGAS, NV 89101

SOUTHWEST FINANCIAL SERVICES LTD
CLARK CO.NV INST NO. 20090328-
537 E. PETE ROSE WAY, SUITE 300

CINCINNATI, OH 45202

OMBUDSMANS OFFICE
251 E. SAHARA AVE #205
LAS VEGAS NV 89104
RE: GORDAN MILDEN

ROBERT HAZELL
14983 MAMMOTH PL

FONTANA, CA 92336

GEORGE R. EDWARDS
4254 ROLLINGSTONE DR

LAS VEGAS, NV 89103-3407

U.S. BANK NATIONAL ASSOCIATION ND
CLARK CO.NV INST NO. 20090328-
4325 17TH AVENUE, SW

FARGO, ND 58103


NOTS MAILINGS

A&K000050

USB0081

U.S. Postal Service
CERTIFIED MAIL RECEIPT
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OFFICIAL USE

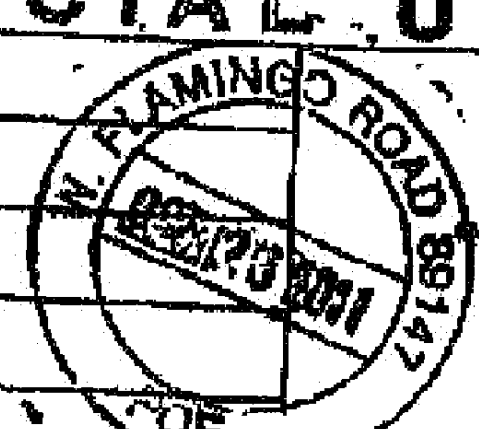
Postage	\$	
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		

Total Postage & **GEORGE R. EDWARDS, TRUSTEE, GEOR**
Sent To 4254 ROLLINGSTONE DR
Street, Apt. No., or PO Box No. LAS VEGAS, NV 89103-3407
City, State, ZIP+4

PS Form 3800, August 2000 See Reverse for instructions

U.S. Postal Service
CERTIFIED MAIL RECEIPT
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OFFICIAL USE


Postage	\$	
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		

Total Postage & **US RECORDINGS**
Sent To CLARK CO. NV INST NO. 20090328-
Street, Apt. No., or PO Box No. 2925 COUNTRY DRIVE STE. 201
City, State, ZIP+4 ST. PAUL, MN 55117

PS Form 3800, August 2000 See Reverse for instructions

U.S. Postal Service
CERTIFIED MAIL RECEIPT
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OFFICIAL USE

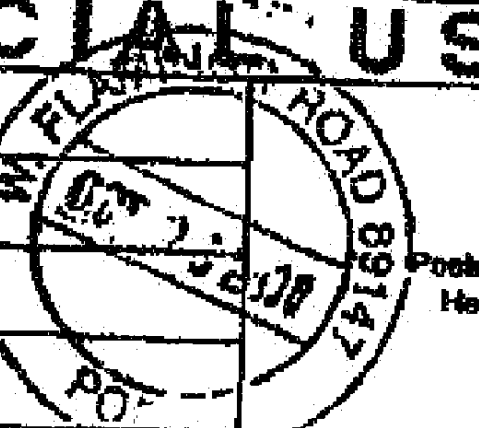
Postage	\$	
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		

Total Postage & **ROBERT HAZELL**
Sent To 14983 MAMMOTH PL
Street, Apt. No., or PO Box No. FONTANA, CA 92336
City, State, ZIP+4

PS Form 3800, August 2000 See Reverse for instructions

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information visit our website at www.usps.com.

OFFICIAL USE

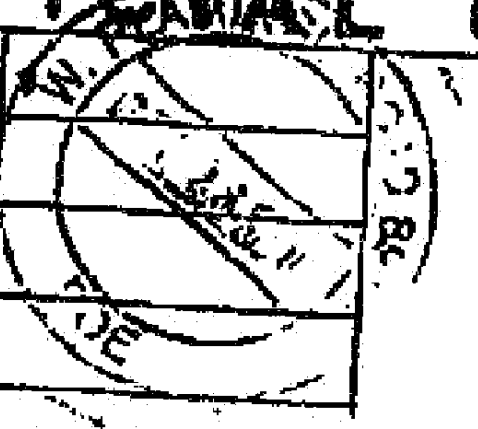
Postage	\$	
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		

Total Postage & **REPUBLIC SERVICES**
Sent To ACCT# 308
Street, Apt. No., or PO Box No. PO BOX 98508
City, State, ZIP+4 LAS VEGAS, NV 89193-8508

PS Form 3800, August 2000 See Reverse for instructions

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information visit our website at www.usps.com.

OFFICIAL USE

Postage	\$	
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		

Total Postage & **LAW OFFICE OF AJ KUN, LTD**
Sent To 1020 GARCES AVE, STE 200
Street, Apt. No., or PO Box No. LAS VEGAS, NV 89101
City, State, ZIP+4

PS Form 3800, August 2000 See Reverse for instructions

A&K000051

USB0082

U.S. Postal Service
CERTIFIED MAIL RECEIPT
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 For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	

Total Postage & **GEORGE R. EDWARDS**
4254 ROLLINGSTONE DR
LAS VEGAS, NV 89103-3407

Sent To
 Street, Apt. No., or PO Box No.
 City, State, ZIP+4

Postmark Here

PS Form 3800, August 2006

U.S. Postal Service
CERTIFIED MAIL RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)
 For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	

Total Postage & **LAW OFFICES OF LES ZIEVE**
T.S. NO. 10-11871
18377 BEACH BLVD, SUITE 210
HUNTINGTON BEACH, CA 92648

Sent To
 Street, Apt. No., or PO Box No.
 City, State, ZIP+4

Postmark Here

PS Form 3800, August 2006

U.S. Postal Service
CERTIFIED MAIL RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)
 For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	

Total Postage & **SOUTHWEST FINANCIAL SERVICES LTD**
CLARK CO. NV INST NO. 20090328-
537 E. PETE ROSE WAY, SUITE 300
CINCINNATI, OH 45202

Sent To
 Street, Apt. No., or PO Box No.
 City, State, ZIP+4

Postmark Here

PS Form 3800, August 2006

U.S. Postal Service
CERTIFIED MAIL RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)
 For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	

Total Postage & **U.S. BANK NATIONAL ASSOCIATION ND**
CLARK CO. NV INST NO. 20090328-
4325 17TH AVENUE, SW
FARGO, ND 58103

Sent To
 Street, Apt. No., or PO Box No.
 City, State, ZIP+4

Postmark Here

PS Form 3800, August 2006

U.S. Postal Service
CERTIFIED MAIL RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)
 For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	

Total Postage & **U.S. BANK TRUST COMPANY, NATIONAL**
CLARK CO. NV INST NO. 20090328-
111 SW FIFTH AVE
PORTLAND, OR 97204

Sent To
 Street, Apt. No., or PO Box No.
 City, State, ZIP+4

Postmark Here

PS Form 3800, August 2006

U.S. Postal Service
CERTIFIED MAIL RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)
 For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	

Total Postage & **OMBUDSMANS OFFICE**
251 E. SAHARA AVE #205
LAS VEGAS NV 89104
RE: GORDAN MILDEN

Sent To
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PS Form 3800, August 2006

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USB0083

When recorded mail to:
Alessi & Koenig, LLC
9500 West Flamingo Rd., Suite 205
Las Vegas, NV 89147
Phone: 702-222-4033

APN: 163-24-111-021

TSN 24230-4254

NOTICE OF TRUSTEE'S 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 The Alessi & Koenig at 702-222-4033. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.

NOTICE IS HEREBY GIVEN THAT:

On November 16, 2011, Alessi & Koenig as duly appointed Trustee pursuant to a certain lien, recorded on January 4, 2011, as instrument number 0005412, of the official records of Clark County, Nevada, WILL SELL THE BELOW MENTIONED PROPERTY TO THE HIGHEST BIDDER FOR LAWFUL MONEY OF THE UNITED STATES, OR A CASHIERS CHECK at: 4:00 P.M. at 930 S. 4th Street, Las Vegas Nevada 89101.

The street address and other common designation, if any, of the real property described above is purported to be: 4254 ROLLINGSTONE DR, LAS VEGAS, NV 89103. The owner of the real property is purported to be: EDWARDS GEORGE R TRUST

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designations, if any, shown herein. Said sale will be made, without covenant or warranty, expressed or implied, regarding title, possession or encumbrances, to pay the remaining principal sum of a note, homeowner's assessment or other obligation secured by this lien, with interest and other sum as provided therein: plus advances, if any, under the terms thereof and interest on such advances, plus fees, charges, expenses, of the Trustee and trust created by said lien. 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 \$5,370.00. Payment must be in cash, a cashier's check drawn on a state or national bank, a check drawn by a state bank or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in section 5102 of the Financial Code and authorized to do business in this state.

Date: September 16, 2011



By: Ryan Kerbow, Esq on behalf of Glenview West Townhomes Association

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EXHIBIT J

EXHIBIT J

AFFIDAVIT OF DAVID ALESSI, ESQ. AS CUSTODIAN OF RECORDS FOR
ALESSI & KOENIG, LLC

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

NOW COMES, DAVID ALESSI, ESQ., who after first being duly sworn, deposes and says:

1. That Affiant is the Managing Partner of Alessi & Koenig, LLC and in his capacity as Managing Partner is a Custodian of the Records of Alessi & Koenig, LLC.

2. That Alessi & Koenig, LLC is licensed to do business as a law firm in the State of Nevada.

3. That on the 14th day October, 2015, Affiant was served with a Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in connection with the case entitled *U.S. BANK NATIONAL ASSOCIATION ND v, GEORGE R. EDWARDS;, et al.* (case no. A-12-667690-C), calling for the production of records pertaining to:

1. Copies of any and all documents in your possession concerning or relating to the real property commonly known as 4254 Rollingstone Drive, Las Vegas, NV 89103 (APN #163-24-111-021) (the "Property") from January 1, 2011 to present.

2. Copies of any and all documents in your possession concerning or relating to the foreclosure sale of the Property conducted by you on behalf of Glenview West Townhomes Association, which occurred on or about January 25, 2012.

3. Copies of any and all documents in your possession concerning or relating to any and all notices of delinquent assessment lien prepared, recorded, or mailed by you on the behalf of Glenview West Townhomes Association concerning the Property from January 1, 2011, to the present. This includes but is not limited to books, records, and

1 other tangible things which demonstrate an accounting of the purported unpaid debt on
2 the Property from January 1, 2011 to present, including the nature of the assessments, fines,
3 and penalties which make up this amount.

4 4. Copies of any and all documents in your possession concerning or relating
5 to any and all notices of default prepared, recorded, or mailed by you on the behalf of
6 Glenview West Townhomes Association, concerning the Property from January 1, 2011, to
7 the present. This includes but is not limited to books, records, and other tangible things which
8 demonstrate an accounting of the purported unpaid debt on the Property from January 1,
9 2011 to present, including the nature of the assessments, fines, and penalties which make up
10 the amount purportedly in default.
11

12 5. Copies of any and all documents in your possession concerning or relating
13 to any and all notices of sale prepared, recorded, or mailed by you on the behalf of
14 Glenview West Townhomes Association concerning the Property from January 1, 2011, to
15 the present. This includes but is not limited to books, records, and other tangible things
16 which demonstrate an accounting of the purported unpaid debt on the Property from
17 January 1, 2011 to present, including the nature of the assessments, fines, and penalties
18 which make up the amount
19

20 6. Copies of any and all documents evidencing correspondence between you
21 and Glenview West Townhomes Association, concerning the Property from January 1, 2011,
22 to the present. This includes but is not limited to letters, emails, and transcribed telephone
23 calls.
24

25 7. Copies of any and all documents evidencing your compliance with
26 preparing and adopting a periodic budget pursuant to NRS 116.3115 from January 1, 2011, to
27
28

1 the present.


2 8. Copies of any and all documents evidencing your compliance with
3 preparing and adopting a periodic budget pursuant to NRS 116.31151 from January 1,
4 2011, to the present.

5 9. Copies of any and all documents evidencing correspondence between you
6 and any mortgage lender or servicer concerning the Property from January 1, 2011, to the
7 present. This includes but is not limited to letters, emails, and transcribed telephone calls.

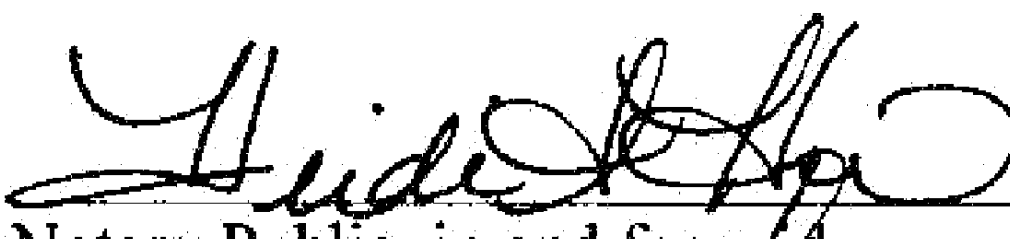
8 4. That Affiant has examined the original of those records and has made or caused to be
9 made a true and exact copy of them and that the reproduction of them attached hereto is true and
10 complete, except for those records which are subject to attorney-client privilege and/or other
11 valid privilege or objection.
12

13 5. That the original of those records was made at or near the time of the act, event,
14 condition, opinion or diagnosis recited therein by or from information transmitted by a person
15 with knowledge, in the course of a regularly conducted activity of Affiant or Alessi & Koenig,
16 LLC.
17

18 FURTHER AFFIANT SAYETH NAUGHT.
19

20
21 
22 DAVID ALESSI, ESQ.,
Affiant

23 SUBSCRIBED AND SWORN before me
24 this 19th day of November, 2015.

25
26 
27 Notary Public, in and for said
28 County and State.

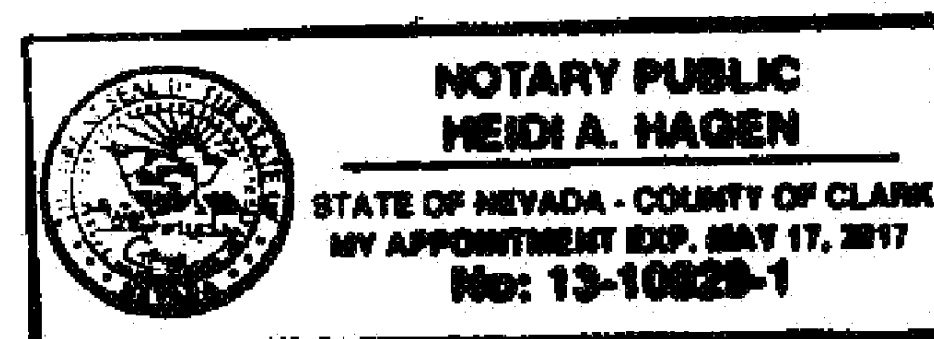


EXHIBIT K

EXHIBIT K

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RETURN TO:
FIRST AMERICAN
TITLE

DECLARATIONS
OF COVENANTS, CONDITIONS AND RESTRICTIONS
GLENVIEW WEST TOWNHOMES

16.1

The Declarant, DIVERSIFIED PROPERTIES CORPORATION, a Nevada Corporation, is the owner of a certain subdivision and tract of land situated in the County of Clark, State of Nevada, and described as follows:

All that parcel of land described in a map entitled Glenview West Townhomes, a "Townhome Subdivision", which was filed for record in the office of the Clark County Recorder, State of Nevada on November 30, 1983, in Book 30 of Plats at Page 65 further described as document No. 1799023.

RECITALS:

1. Declarant is the owner of a certain tract of land situated in the County of Clark, State of Nevada, as described above.

2. Declarant has improved or intends to improve the property by constructing on the property, Townhome structures which have been or will be constructed substantially in accordance with plans approved by the County of Clark on December 5, 1983.

3. All of the real property, including all structures and other improvements thereon, is hereby defined and shall hereinafter be referred to as the "project".

4. Declarant hereby established, by this Declaration, a plan for individual ownership of the real property estates consisting of the area or space contained beneath each of the units in each structure and the adjoining land referred to as "Lot", and an undivided fractional interest ownership in Glenview West Townhomes Homeowners Association that being all the remaining portion of the project, which is hereinafter defined and referred to herein as the "common area".

DECLARATION:

Declarant, the fee owner of the real property described in the introduction above, hereby makes the following Declaration as to divisions, easements, rights, liens, charges, covenants, restrictions, limitations, conditions and uses to which the property may be put, hereby specifying that such Declaration shall constitute covenants to run with the land and shall be binding on Declarant, its successors and assigns, and all subsequent owners of all or any part of the project together with their grantee, successors, heirs, executors, administrators, devisees or assigns.

NOW THEREFORE, Declarant, desiring to establish a general plan for the improvement, development, use and enjoyment of the property described above hereby declares that the said property shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having or acquiring any right, title or interest in the said property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

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ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Glenview West Townhomes Association, a Nevada nonprofit corporation, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of equitable title (or legal title if equitable title has merged) in any Lot which is a part of the Properties, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" or "Development" or "Premises" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association and become subject to this Declaration.

Section 4. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows: All properties within the boundaries of the Plat except Lots 1 through 50 and that Property dedicated to any governmental entity. Additional property may hereafter be brought within the jurisdiction of the Association and designated a "Common Area".

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the properties with the exception of the Common Area.

Section 6. "Declarant" shall mean and refer to Diversified Properties Corporation, a Nevada Corporation, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 7. "Unit" shall mean and refer to a residential living unit constructed upon a separately designated Lot, without limiting or restricting the definition of Lot referred to in Section 5 above, which also may include any improvements on a Lot.

Section 8. "Mortgage" shall mean a realty mortgage and include deeds of trust; "Mortgagee" includes a beneficiary under a deed of trust; "Mortgagor" includes a trustor under a deed of trust; and "Foreclosure" includes a trustee's sale proceeding pursuant to a deed of trust.

ARTICLE I

USE RESTRICTIONS

Section 1. Residential Use. All of the Lots in the Development shall be known and described as, and limited in use to, residential purposes. No improvements or construction whatever, other than a private dwelling and appurtenant uses, may be erected or maintained on any of the lots unless specifically authorized, in writing, by the Board pursuant to Article X below.

Section 2. Construction. All units and structures on the Lots shall be of new construction and no buildings or structures shall be moved from any other location onto any of the Lots.

Section 3. Temporary Structures. No structures of a temporary character shall be permitted on the Premises, and no trailers (except those permitted to be parked pursuant to Section 8 of this Article), and no tents, shacks or barns shall be permitted on the Premises, either temporarily or permanently.

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Section 4. Business or Offensive Activities. No noxious or offensive activity may be carried on or permitted on any part of the Properties, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood; nor shall any part of the Premises be used for business, professional, commercial, rest home (including but not limited to care or treatment of the physically or mentally sick or disabled), religious or institutional purposes. This section does not apply to the activities of the Association in furtherance of its powers and purposes as set forth in this Declaration.

Section 5. Signs. No sign of any nature whatsoever shall be displayed or placed upon any Lot or on the outside of any Unit. No "For Sale" or "For Rent" signs of any nature whatsoever shall be permitted on any part of the Premises, and no other signs shall be permitted on any of the Common Areas without the prior written consent of the Board.

Section 6. Outside Lighting. Except as may be initially installed by Declarant, no spotlights, floodlights or similar type high intensity lighting shall be placed or utilized upon any Lot which in any way will allow light to be reflected on any other Lot or the improvements thereon or upon the Common Area or any part thereof without the written authorization of the Board. Other types of low intensity lighting which do not disturb the Owners or other occupants of the Properties shall be allowed.

Section 7. Animals, Pets. Only two dogs, two cats, a dog and a cat or two other small household pets may be kept on a Lot without Board approval, provided that such household pets are not kept, bred or maintained for any commercial purposes. Two small birds may also be kept in addition to the foregoing animals provided such birds are caged and do not disturb neighboring Lots. All additional small household pets are prohibited unless approved by the Board. Except as stated above, no other animals or birds of any kind shall be raised, bred or kept on the Premises or any part thereof without the written consent of the Board first obtained. Pets shall not be allowed loose or unsupervised on any part of the Properties and walking of pets shall be allowed only on such portions of the Properties as the Board may prescribe by its rules and regulations.

Section 8. Trucks, Boats, Cycles, Campers. Residents are permitted to park only passenger cars, station wagons, small trucks, motorcycles, small vans, boats, small trailers and campers on their own private parking area. No portion of any vehicle will be allowed to project into the commonly owned streets or driveways. Visitors are permitted to either temporarily park in the common area parking spaces, or on the private parking areas of the resident being visited. Except in an emergency or as may be necessary for the performance of authorized repair or maintenance of common areas, no vehicle or equipment shall be kept or parked in the streets, driveways, or on any other common area property unless specific written permission is given by the Board. No vehicle or equipment shall be stored either permanently or temporarily on the Development, whether on blocks or otherwise, which is inoperable and/or in a state of disrepair, or which is in various stages of construction, repair, reconstruction, modification, or rebuilding with respect to the vehicle or any part thereof, including without limitation, engines, frames, bodies, and other parts and accessories. If the Board determines that any vehicle (including but not limited to a motorbike or motorcycle) is creating loud or annoying noises by virtue of its operation within the Properties, such determination shall be conclusive and final that the operation of such vehicle is a nuisance and said operation, upon notice by the Board to the owner or operator thereof, shall be prohibited within the Properties. Subject to the above restrictions, all vehicles must be operated in the Development by licensed operators.

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Section 9. Windows and Awnings. No reflective materials, including but not limited to, aluminum foil, reflective screens or glass, mirrors or similar type items shall be permitted to be installed or placed on the outside or inside of any windows or any other part of a Lot which can be seen from the outside of the Development or from other portions of the Development. Further, no metal or rigid plastic awnings of any nature whatsoever shall be permitted to be placed or installed on or attached to the outside of any of the Units, or elsewhere on a Lot, except those initially installed by Declarant, or approved by the Board.

Section 10. Screening Areas, Fencing. All screening areas and fences, hedges or walls shall be maintained upon the Premises in accordance with their original construction or installation, except as otherwise approved in accordance with Article X.

Section 11. Trash, Unsightly Items. All clotheslines equipment, service areas, woodpiles, storage piles and storage areas shall be kept screened by adequate planting or fencing so as to conceal them from view of neighboring property and streets. Garbage cans shall be maintained in a neat, clean and sanitary condition in the areas therefor along the back fence line of the Owners Lot. Rubbish, trash and garbage shall not be burned on or allowed to accumulate on any Lot or on the Premises. No incinerators shall be permitted on the Premises or any part thereof.

Section 12. Underground Utilities. All electric, power, telephone, water and other service and utility lines, pipes and/or other structures and media for transmission thereof shall be placed and maintained underground except above-ground service pedestals and switch cabinets, and except to the extent (if any) such underground placement may be prohibited by law, and except for such above-ground structures and/or media for transmission as may be originally constructed by Declarant or as may be otherwise approved in writing by the Board.

Section 13. Noisy Equipment. Except for emergencies, no equipment which emanates disturbing sounds or loud noises, including but not limited to, lawn mowers, power hedge clippers, power chain saws and other similarly noisy equipment, shall be operated in any part of the Properties on Sundays or National Holidays.

Section 14. Antennas. No radio, television and other antennas of any kind or nature shall be placed and maintained upon any Lot or the Premises or any part thereof (or the improvements located thereon) unless approved in writing by the Board.

Section 15. Renting. No portion of any Lot may be rented, except to a single person or single family. The restriction set forth in this Section 15 shall apply only to rental of Lots and shall not be deemed to restrict or limit the manner in which any Lot is purchased or owned or the number or relationship of the person purchasing or owning any Lot.

Section 16. Subdividing. None of the Lots shall be resubdivided into smaller Lots or conveyed or encumbered in less than the full original dimensions as shown on the Plat of this Development.

Section 17. Walls. The walls of any building or improvements and fences constructed on any Lot shall not exceed the height of the original construction unless approved in writing by the Board. Setback lines shall be maintained in accordance with the original construction on each Lot unless otherwise permitted by written approval of the Board.

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Section 18. Declarant Exempt. Notwithstanding anything contained herein to the contrary or otherwise, none of the use restrictions contained in this Article II nor any other restriction contained in this Declaration shall be construed or deemed to limit or prohibit any act of Declarant, or its employees, agents and subcontractors or parties designated by it in connection with the construction, completion, sale or leasing of the Units and Lots.

ARTICLE III

PROPERTY RIGHTS

Section 1. Owners Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot. It is expressly acknowledged and agreed by all parties concerned that this Section is for the mutual benefit of all Owners of the Lots and is necessary for the protection of all Owners. Such easement of enjoyment is, however, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area.

(b) the right of the Association to suspend the voting rights and right to use the recreational facilities by an owner for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication signed by two-thirds (2/3) of each class of members has been recorded.

(d) the right of the Association to establish uniform rules and regulations pertaining to the use of the Common Area.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with this Declaration, the Articles of Incorporation, the Bylaws, and the rules and regulations of the Board, his right to enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

ARTICLE IV

EASEMENTS

Section 1. Blanket Easement for Utilities. There is hereby created a blanket easement upon, across, over and under the Properties for ingress, egress, installation, replacing, repairing and maintaining all utilities including but not limited to water, sewers, telephones, cable television and electricity. By virtue of said easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary facilities and equipment on the Properties and to affix and maintain wires, circuits, conduits and related facilities and equipment on, above, across and under the roofs and exterior

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walls of the Units. Notwithstanding anything to the contrary contained in this Section, no easements shall be created nor shall any sewers, electrical lines, water lines, or other facilities for utilities be installed or relocated on the Properties except as initially created, programmed and approved by Declarant or thereafter created or approved by Declarant or the Association. This provision shall in no way affect any other recorded easements on the Properties. Notwithstanding anything herein to the contrary, individual utilities serving a Unit shall not pass over, under, or through another Unit.

Section 2. Common Area Easements. There is hereby created a blanket easement upon and across the Common Areas and that Lot area in front of each unit in favor of (1) each Lot Owner and his guests and invitees for the purpose of providing ingress and egress to the Lot owned by said Owner, (2) the Association and its invitees, employees or independent contractors for the purpose of providing landscaping or other maintenance to the Common Areas, and (3) the Declarant and its invitees, employees or independent contractors for the purpose of providing landscaping or other maintenance to the Common Areas, and for any activities related to the promotion and sale of any of the Lots or any Lots within the expansion areas referred to in Article XI hereof.

Section 3. Rights of Association and Declarant. There is hereby created a blanket easement upon, across, over and under the Lots in favor of the Declarant and the Association, their respective invitees, employees or independent contractors for the purpose of maintaining or replacing any improvements upon such Lots to the extent the Declarant and/or the Association have the authority under this instrument to undertake such maintenance for replacement.

Section 4. Encroachments. Each Lot, Unit and the Common Areas shall be subject to an easement for encroachments, including but not limited to encroachments of balconies, ledges, roofs, walls fences and trellises, created by construction, settling and overhangs, as designed or constructed by Declarant or its nominee. A valid easement for said encroachments and for the maintenance of same, so long as they stand, shall and does exist. In the event of any Unit or any structure is partially or totally destroyed and then rebuilt, the Owners of Units agree that similar encroachments of parts of the adjacent Units or Common Areas due to construction, settling and overhangs shall be permitted and that a valid easement for said encroachments and the maintenance thereof shall exist.

Section 5. Interference. Except as may be constructed by Declarant or its nominee or as specifically allowed by this Declaration and the Plat, no building or other structures shall be placed or erected on any easements nor interference made with the free use thereof for the purposes intended.

ARTICLE V

ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS

Section 1. Purpose. The Association shall be a nonprofit corporation organized under and by virtue of the laws of the State of Nevada for the general welfare and benefit of the property Owners and the Development. The Association through its Members and Board, shall take the appropriate action to manage and maintain, repair, replace and improve the Common Areas together with improvements located thereon, to perform related activities, and to perform all other functions and duties assigned to the Association by this Declaration, all in accordance with this Declaration and with the Articles of Incorporation and Bylaws.

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Section 2. Membership. Membership in the Association shall be limited to the Owners of Lots as hereinabove defined, and such membership shall be subject to all the provisions of this Declaration and to the Association's Articles of Incorporation and Bylaws, as the same may be amended from time to time. An Owner of a Lot shall automatically, upon becoming the Owner of a Lot, be a Member of the Association. An Owner shall remain a Member of the Association until such time as his ownership for any reason ceases, at which time his membership in the Association automatically shall cease. Ownership of a Lot shall be the sole qualification and criterion for membership. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. A membership in the Association shall not be transferred, pledged or alienated in any way except by the sale of such Lot and then only to such purchaser who shall automatically become a member of the Association after such conveyance, or by intestate succession, testamentary disposition, foreclosure of a Mortgage of record or other legal process. Any attempt to make prohibited transfer is void and will not be reflected upon the books and records of the Association. At the discretion of the Board, no certification of membership need be issued, and if certificates are not issued, membership shall be evidenced by an official list of Members kept by the Secretary of the Association.

Section 3. Voting Rights. The Association shall have two (2) classes of voting memberships:

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. In the event any such Lot is owned by two (2) or more persons, the membership as to such Lot shall be joint, and a single membership for such Lot shall belong to all Owners, and they shall designate to the Association in writing one of their number who shall have the power to vote said membership, and in the absence of such designation, and until such designation is made, the Board shall make such designation.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership.

ARTICLE VI

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation Of Assessments.

The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual special assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

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Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the general benefit, recreation, health, safety and welfare of the residents in the Properties. Such purposes shall include, but shall not be limited to, and the Association's rights and powers shall include (in addition to the rights and powers set forth in this Declaration and in the Association's Articles of Incorporation and Bylaws) provision for the improvement, construction, repair, maintenance, care, upkeep and management of the Common Areas and the improvements and facilities thereon; and further, shall include the payment of any taxes and assessments, if any, which may be assessed against and levied upon any property owned by the Association, and all premiums for hazard and public liability insurance, together with all other costs and expenses related to the management and maintenance of the Common Areas and Unit exteriors.

Section 3. Basis Of Assessments. The Board, subject to the provisions of this Article, shall determine and establish a budget and make assessments upon the Owners of Lots on the basis of costs and expenses incurred or estimated to be incurred by the Association. The Owner of each lot for said Owner and for said Owner's heirs, executors, administrators, personal representatives, successors and assigns, covenants and agrees that each Lot shall be subject to an assessment in an amount to be determined, which amount shall be the said Lot's pro rata share of the following:

(a) The actual cost to the Association of all taxes and improvement assessments (if any), water, utilities, insurance, repairs, construction, replacement and maintenance of Common Areas and the improvements and facilities located thereon, and Unit exteriors, and shall include but not be limited to charges in connection with the sprinkler systems, street paving, pathways, security guard service (if any), sewer lines, utility expense related to Lots served by joint meters, and other services benefiting the Owners, and all other charges necessary or appropriate to carry out the purposes of the Association as set forth in this Declaration, the Articles of Incorporation and Bylaws of the Association, and its rules and regulations; and

(b) Such sums as the Board shall determine to be fair and prudent for the establishment and maintenance of a reserve for repair, maintenance, taxes, insurance, management and administrative costs and other charges as specified herein.

Section 4. Maximum Annual Assessments. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Six Hundred Dollars (\$600.00) per lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased effective January 1 of each year without a vote of the membership in conformance with the rise, if any, of the Consumer Price Index (published by the Department of Labor, Washington, D.C.) for the preceding month of July.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above that established by the Consumer Price Index formula by a vote of members for the next succeeding one year and at the end of each such period of one year, for each succeeding period of one year, provided that any such change shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in

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person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 5. Special Assessments for Capital Improvements In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 6. Notice and Quorum For Any Action Authorized Under Section 4 and 5. Written notice of any meetings called for the purpose of taking any action authorized under Section 4 and 5 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Uniform Rate of Assessment. Except as provided in Section 12 below, both annual and special assessments must be fixed as at uniform rate for all Lots and may be collected on a monthly basis.

Section 8. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 9. Individual Assessment For Restoration of Owners Lot.

(a) In the event the Owner of a Lot fails to maintain his Lot (including the yard, patio and landscaping thereon as required pursuant to Article VII, Section 2, but excluding those obligations of the Association pursuant to Article VII, Section 1, hereof) in a first-class, neat and clean condition, and generally in a manner satisfactory to the Board, the

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Association or the Board, through its agents, employees and/or independent contractors, shall have the right, and each Owner expressly grants and assigns the Association the right (subject to prior notice as hereinbelow set forth) to enter upon such Owner's Lot and repair, maintain, rehabilitate and restore the Lot, yard, patio, and exterior of any and all buildings and/or other structures located thereon to the condition deemed satisfactory to the Board, or to remove structures therefrom which are, in the opinion of the Board or the Association, in such a state of disrepair or such a condition as to be objectionable to surrounding Lot Owners. The cost thereof shall be charged against and collected from the Owner of the Lot, the amount thereof to be paid by the Owner within thirty (30) days from the date of the invoice sent to the Owner, and said amount further shall be secured by and subject to all provisions regarding the assessment lien as provided in this Article.

(b) Prior to exercising the aforesaid right of restoration, the Board shall give written notice to the Owner of said Lot specifying the necessary repairs, maintenance, rehabilitation or restoration to be undertaken, and granting the Owner thirty (30) days to accomplish the same. If at the end of said period, the work required to be performed has not been completed (or has been completed in a manner unsatisfactory to the Board), or if, in the opinion of the Board, sufficient action has not been taken to effect same, then the Association or the Board shall have the right, as above set forth, to make such repairs, maintenance, rehabilitation or restoration.

(c) Nothing herein contained shall be construed as granting to the Association or the Board any right to enter into or inside of any building or buildings located on a Lot without the consent of the Owner thereof.

Section 10. Effect of Nonpayment of Assessments:
Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of ten percent (10%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 11. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve said Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 12. Assessment for Declarant's Lots.
Notwithstanding anything herein to the contrary, the Declarant shall be responsible for and shall pay only twenty-five percent (25%) of any annual assessment for any Lot owned by Declarant until such time as the Unit thereon is occupied. After such time as the Unit on such Lot is occupied, the Declarant shall be responsible for and pay all of any annual assessments for any Lot owned by Declarant.

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ARTICLE VII

MAINTENANCE

Section 1. Rights and Obligations of Association. The Board, acting for and on behalf of the Association, shall have the obligation to maintain, repair and replace the Common Areas (except any portion now or hereafter maintained by any governmental agency with jurisdiction over said portion or any portion maintained by an Owner pursuant to Article VIII below), and all landscaping, recreational facilities and other improvements located thereon, including, without limitation, sewer lines in accordance with the terms and conditions hereof. Without limiting the generality of the foregoing, the Association shall have the right at any and all times to promulgate reasonable rules and regulations concerning the landscaping, color scheme and other related matters affecting the outside appearance of the Development as a whole, and the individual Unit Owners shall be bound thereby. The powers, rights and duties of the Association and Board shall be as contained in this Declaration, and as may be adopted in its Articles of Incorporation and Bylaws not inconsistent herewith.

In addition to maintenance of the Common Areas, the Board, acting for and on behalf of the Association, shall provide exterior maintenance of each Lot which is subject to assessment as follows: paint, repair, replacement and care of roofs, exterior buildings surfaces, walks and other exterior improvements. Such exterior maintenance shall not include patios, glass surfaces, landscaping on the Lot, fences along the Lot lines or private parking areas.

In the event that the need for maintenance or repair of a Lot or the improvements thereon is caused through the willful or negligent acts of its Owner, or through the willful or negligent acts of the family, guests or invitees of the Owner of the Lot needing such maintenance or repair, the cost of such exterior maintenance shall be added to and become a part of the assessment to which such Lot is subject.

Section 2. Rights and Obligations of Owners. Except for those items for which the duty to maintain or repair is imposed on the Association in accordance with Section 1 of this Article, all fixtures and equipment (including heating and air conditioning units) installed within or on a Unit or a Lot, including but not limited to, patios, all windows which are a part of any Unit, fences along Lot lines, private parking areas, and all landscaping on the Lot, shall be maintained and kept in repair by the Owner thereof at his sole cost and expense except that the Association shall have the right to undertake the care and maintenance of all or any portion of the Lots and to promulgate reasonable rules and regulations as aforesaid, and the Association shall have the right at any time to maintain and repair utility lines, pipes, wires, conduits or similar systems or facilities up to the point where they enter the exterior walls of a Unit. Each Owner shall be responsible for maintenance and repair of all yard areas, patios and private parking areas located upon his Lot, and all landscaping thereon. Termite control shall be the responsibility of the Owner. An Owner shall do no act nor any work that will impair the structural soundness or integrity of the Development or impair any easement, nor do any act nor allow any condition to exist which will adversely affect the other Units or their Owners.

Section 3. Insurance. The Board shall have the authority to and shall obtain insurance for the entire Development, including each of the Units, against loss or damage by fire, hazards covered by a standard extended coverage endorsement, and such other hazards covered by a standard extended coverage endorsement, and such other hazards as are customarily insured

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against in the Las Vegas, Nevada area. Such insurance shall be in an amount sufficient to provide full replacement of any damage in an amount not less than one hundred percent (100%) of the full insurable value of the Common Area and the Units, as determined at least once each year by the Board. Such insurance coverage shall be written in the name of and the proceeds thereof shall be payable to, the Association, as Trustees for and for the use and benefit of the individual Unit Owners in their respective percentages of ownership interest in the Common Area, and to the holders of mortgages or the beneficiaries of deeds of trust covering each of the Units, as their interests may appear. Such policy of insurance shall, if possible, contain a waiver of subrogation rights by the insurer against individual Owners.

The Board shall also obtain comprehensive public liability policy covering any liability of the Association on the Development and, if available, coverage of liability of Owners of the Units on their respective private parking areas. Such insurance policies shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Unit Owner. The scope of coverage shall be in the kinds and amounts as the Board may determine. Coverage shall be for not less than One Million and No/100 Dollars (\$1,000,000.00) per occurrence, for personal injury and/or property damage.

Premiums for all of the above-referenced insurance shall be common expenses and assessed against each Owner as provided herein. Each Owner shall be responsible for his own insurance on the personal property contents of his Unit, any additions, decorating or fixtures or other improvements placed therein or stored elsewhere on the Property. Each Unit Owner shall further be responsible to provide his own personal liability coverage to the extent not covered by the liability insurance to be provided by the Board as set forth above.

ARTICLE VIII

SWIMMING POOL

Section 1. Swimming Pool. The swimming pool, if any, shall be deemed to be part of the Common Area and be administered by the Association. All powers of the Association as granted by the Covenants, Conditions and Restrictions to other areas of the Common Area shall also apply to the swimming pool. In addition, the Association may promulgate any reasonable rules concerning the operation of the pool including but not limited to: opening and closing dates of the pool, times of operation, conduct within the pool area, heating and maintenance of the pool. Nothing contained herein shall conflict with the authority of the Health Department of Clark County, Nevada in respect to its enforcement of its rules regarding the operation of public swimming pools.

ARTICLE IX

PARTY WALLS AND FENCES

Section 1. General Rules of Law to Apply. Each wall or fence which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a "party wall," for the purposes hereof, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

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Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provisions of this Article, in the event a party wall is damaged or destroyed as a result of the negligent or willful act or omission by an adjoining Owner, his agents, tenants, licensees, guests or family, then in such event, such Owner shall bear the whole cost of rebuilding and/or repairing such party wall.

Section 5. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Extension or Alteration. In addition to meeting the other requirements of these restrictive covenants and of any building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild his Unit in any manner which requires the extension or other alteration of any party wall shall first obtain the written consent of the adjoining Owner, and approval of the Board, and approval of the Building Department of the City of Las Vegas, and/or Clark County Nevada together with necessary building permits.

Section 7. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each Owner shall choose an arbitrator, and such arbitrators shall choose an additional arbitrator, or if the two arbitrators cannot agree as to the selection of the third arbitrator within five (5) days, then any Judge of the Superior Court of Clark County, Nevada shall choose the additional arbitrator. A determination of the matter signed by any two (2) of the three (3) arbitrators shall be binding upon the Owners, who shall share the cost of the arbitration equally. In the event one Owner fails to choose an arbitrator within the (10) days after receipt of a request in writing for arbitration from the other Owner, then said other Owner shall have the right and power to choose both arbitrators.

Section 8. Covenants Binding. These covenants shall be binding upon the heirs and assigns of any Owners, but no person shall be liable for any act or omission respecting any party wall except as took place while an Owner.

ARTICLE X

ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon any Lot, nor shall any exterior addition to or change or alteration herein be made until the plans and specifications showing the nature, kind, shape, height, colors, materials and locations of same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an

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architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with, provided that the building, structure or other improvement to be built or placed on the Properties shall be governed by all of the Restrictions in this Declaration. The initial landscaping that is provided or approved by the Board shall not be altered or changed (except for similar replacements and rehabilitation) without the prior approval of the Board. Notwithstanding the foregoing, the Restrictions and controls set forth in this Section shall not be applicable to Declarant with respect to any original construction or landscaping undertaken by Declarant within the Properties.

ARTICLE XI

GENERAL PROVISIONS

Section 1. Enforcement. The Association, the Declarant or any Owner shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. In the event any such person employs an attorney or attorneys to enforce compliance with or specific performance of the terms and conditions of this Declaration, and prevails in such action, the Owner or Owners against whom the action is brought shall pay all attorney's fees and costs incurred in conjunction with such action. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The foregoing shall apply regardless of whether any person affected thereby (or having the right to enforce these Restrictions) had knowledge of the breach or violation.

Section 2. Severability. Invalidity of any one of these covenants or restrictions by judgement or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Admendment. The covenants and restrictions of this Declaration shall run with and bind the land, and shall be binding upon each Owner and his heirs, executors, administrators, successors and assigns and all other persons claiming an interest in and to the Properties, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first thirty (30) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded in the office of the County Recorder of Clark County, Nevada.

Section 4. Construction and Interpretation of Declaration. Except for judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and Properties benefited or bound by these Restrictions.

Section 5. Gender. Whenever the context of this Declaration so requires, words used in masculine gender shall include the feminine and neuter genders, words used in the neuter gender shall include the masculine and feminine genders, words in the singular shall include the plural, and words in the plural shall include the singular.

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Section 6. Captions, Titles and Headings. All captions, titles and headings of the Articles and Sections of this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof, or to be used in determining the intent or contents hereof.

Section 7. Jurisdiction. All Owners agree that any matter arising under this Declaration may be finally adjudged or determined in any court of courts of the State of Nevada, and such Owners hereby submit generally and unconditionally to the jurisdiction of such courts and of any of them in respect to any such matter; provided, however, as to those matters to be submitted to arbitration pursuant to any provision hereof, such arbitration provisions shall be controlling and prevail.

Section 8. Annexation.

(a) Additional residential property and common area may be annexed to the properties with the consent of two-thirds (2/3) of each class of members.

(b) Additional land within the area described in Deed Book _____ Page _____ of the land records of Clark County Nevada may be annexed by the Declarant without the consent of Members within Five (5) years of the date of this instrument provided that the FHA and/or VA determine that the annexation is in accord with the general plan heretofore approved by them.

Section 9. FHA/VA Approval. As long as there is a Class B membership and provided the FHA and/or VA have approved the development for FHA and/or VA loans, the following actions will require the prior approval of the Federal Housing Administration and/or the Veterans Administration: Annexation of additional Properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 8th day of December, 1983.

DIVERSIFIED PROPERTIES CORPORATION,
a Nevada Corporation, Declarant

By Park K. Haws
Its President PARK K. HAWS

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

The foregoing instrument was acknowledged before me this 8th day of December, 1983, by Park K. Haws the President of DIVERSIFIED PROPERTIES CORPORATION, a Nevada Corporation, on behalf of the Corporation.

[Signature]
NOTARY PUBLIC

My commission expires:
March 10, 1984



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CLARK COUNTY, NEVADA
JOAN L. SWIFT, RECORDER
RECORDED AT REQUEST OF
FIRST AMERICAN TITLE CO. OF NEVADA

DEC 12 10 44 AM '83

PER JOAN L. SWIFT DEPUTY
OFFICIAL RECORDS
INSTRUMENT

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EXHIBIT L

EXHIBIT L

IN THE SUPREME COURT OF THE STATE OF NEVADA

NAVY FEDERAL CREDIT UNION,

Appellant,

vs.

SATICOY BAY LLC SERIES 1916
SUMMER POINT,

Respondent.

Electronically Filed
Dec 13 2016 10:30 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court Case No. 69308

Appeal from Eighth Judicial District
Court, Clark County, Nevada,
Case No. A-14-703202-C

**MOTION OF NEVADA LEGISLATURE FOR LEAVE
FOR LATE FILING OF AMICUS CURIAE BRIEF**

BRENDA J. ERDOES

Legislative Counsel

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Attorneys for Amicus Curiae Nevada Legislature

MOTION

Pursuant to NRAP 26(b)(1)(A), NRAP 27(a) and NRAP 29(f), the Nevada Legislature (Legislature), by and through its counsel the Legal Division of the Legislative Counsel Bureau under NRS 218F.720, hereby files this motion for leave for late filing of the Legislature's proposed amicus brief. As required by NRAP 29(c), a copy of the proposed amicus brief accompanies this motion.

GROUND AND LEGAL ARGUMENT

The Legislature's proposed amicus brief supports the facial constitutionality of the former statutes in NRS 116.3116-116.31168 that regulated nonjudicial foreclosure of superpriority liens by homeowners' associations (HOAs) for certain unpaid HOA dues. In 2015, the Legislature amended the former statutes and revised the foreclosure procedures. SB306, 2015 Nev.Stat., ch.266, §§1-7, at 1331-45. However, the facial challenge in this case—and in numerous other appeals currently pending before this Court—is based on the former statutes as they existed before the amendments (the pre-amendment statutes).¹ Because the pre-amendment statutes were in effect for 25 years, their facial invalidation could adversely affect hundreds of HOAs and call into question thousands of

¹ The Legislature's proposed amicus brief is limited solely to legal issues concerning the proper statutory interpretation of the pre-amendment statutes and their facial constitutionality under procedural due process. The proposed amicus brief does not address any other legal issues arising from the particular facts of this case, and it does not support either party concerning such other legal issues.

foreclosures, which could cloud property titles and undermine the stability and vitality of Nevada's real estate markets.

On November 23, 2016, this Court entered an order determining that oral argument before the en banc Court may be of assistance in resolving this case and directing such oral argument to be scheduled on the next available calendar. Because facial invalidation of the pre-amendment statutes could have far-reaching adverse consequences on the stability and vitality of Nevada's real estate markets, the Legislature respectfully asks this Court for leave for late filing of its proposed amicus brief so that it may present its legal arguments to the en banc Court to defend the facial constitutionality of the pre-amendment statutes.

The Legislature acknowledges that it is asking for leave at a late juncture in this case. However, because there are so many other appeals currently pending before this Court that raise the same facial challenge to the pre-amendment statutes under procedural due process, the Legislature believes it would be in the best interests of judicial economy and efficiency for the en banc Court to consider the Legislature's legal arguments in its proposed amicus brief as part of the Court's preparation for oral argument in this case.

The Legislature notes that on December 12, 2016, it timely filed the same amicus brief in HSBC Bank USA v. SFR Invs. Pool 1, Nevada Supreme Court Case No. 69437, which raises the same facial challenge to the pre-amendment

statutes under procedural due process. However, to avoid burdening this Court with repeated filings by the Legislature of the same amicus brief in the other appeals that raise the same facial challenge to the pre-amendment statutes under procedural due process, the Legislature respectfully asks this Court to accept the Legislature's proposed amicus brief in this case in the interests of judicial economy and efficiency.

The Legislature also respectfully asks this Court to accept the Legislature's proposed amicus brief in this case because in Bourne Valley Court Trust v. Wells Fargo Bank, 832 F.3d 1154 (9thCir.2016), a panel of the Ninth Circuit misapplied Nevada's rules of statutory interpretation and, as a result of its erroneous interpretation, facially invalidated the pre-amendment statutes as violating the procedural due-process rights of all mortgage lenders. However, under well-established U.S. Supreme Court precedent, the panel should not have decided state-law questions of statutory interpretation but should have certified those state-law questions to this Court for final decision because the pre-amendment statutes were "susceptible of . . . an interpretation [that] would avoid or substantially modify the federal constitutional challenge to the statute[s]." Arizonans for Official English v. Arizona, 520 U.S. 43, 77-80 (1997) (quoting Bellotti v. Baird,

428 U.S. 132, 148 (1976), and admonishing the Ninth Circuit for failing to certify state-law questions of statutory interpretation to the state’s highest court).²

Because this Court is the final arbiter of the meaning of Nevada state law, this Court is not bound by the Bourne Valley panel’s erroneous statutory interpretation of the pre-amendment statutes. See Blanton v. N. Las Vegas Mun. Ct., 103 Nev. 623, 633 (1987) (“[T]he decisions of the federal district court and panels of the federal circuit court of appeal are not binding upon this court.”), *aff’d*, Blanton v. City of N. Las Vegas, 489 U.S. 538 (1989). Therefore, the Legislature has an interest in presenting the legal arguments in its proposed amicus brief and having this Court provide a final and binding interpretation of the pre-amendment statutes based on Nevada’s rules of statutory interpretation.

Specifically, when Nevada’s rules of statutory interpretation are applied to the plain language and legislative history of the pre-amendment statutes, it is inescapable that the statutes—which expressly incorporated the deed-of-trust foreclosure procedures from NRS 107.090—required HOAs to provide lenders with notice that satisfied procedural due process. But even assuming there was any

² After the Bourne Valley panel issued its decision, the Legislature filed an amicus brief with the Ninth Circuit supporting Bourne Valley’s petition for rehearing or rehearing en banc. Ninth Circuit Case No. 15-15233, DktEntry: 51-1 (Sept. 6, 2016). Because the Ninth Circuit denied the petition on November 4, 2016, it is the Legislature’s understanding that Bourne Valley will be filing a petition for certiorari review with the U.S. Supreme Court, and the Legislature intends to file an amicus brief supporting that petition.

doubt and the statutes were susceptible of conflicting interpretations, one rendering them constitutional, and the other unconstitutional, the judicial branch must adopt the constitutional interpretation. Sheriff v. Wu, 101 Nev. 687, 689-90 (1985).

The rule which directs the judicial branch to adopt the constitutional interpretation is paramount to other rules of statutory interpretation because the duty of the judicial branch to save statutes from an unconstitutional interpretation is derived from the constitutional separation of powers which—out of respect for a coequal branch of government whose legislative members also take an oath to uphold the Constitution—requires the judicial branch to presume the legislative branch “legislates in the light of constitutional limitations.” Rust v. Sullivan, 500 U.S. 173, 191 (1991); Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Const. Trades Council, 485 U.S. 568, 574-75 (1988); Illinois v. Krull, 480 U.S. 340, 351 (1987); Rostker v. Goldberg, 453 U.S. 57, 64 (1981). Therefore, based on the constitutional separation of powers, the judicial branch must adopt any reasonable construction which will save the statutes from unconstitutionality. Rust, 500 U.S. at 190 (“[A]s between two possible interpretations of a statute, by one of which it would be unconstitutional and by the other valid, our plain duty is to adopt that which will save the Act.” (quoting Blodgett v. Holden, 275 U.S. 142, 148 (1927) (opinion of Holmes, J.))).

Consequently, the Legislature respectfully asks this Court to consider the legal arguments in its proposed amicus brief and to provide a final and binding interpretation of the pre-amendment statutes which is based on Nevada's rules of statutory interpretation and is consistent with the plain language and legislative history of the statutes. When the pre-amendment statutes are properly interpreted under Nevada's rules of statutory interpretation, the statutes survive a facial challenge because they expressly incorporated the deed-of-trust foreclosure procedures from NRS 107.090 and, as a result, they required HOAs to provide lenders with notice that satisfied procedural due process.

CONCLUSION

Based on the foregoing, the Legislature respectfully asks this Court to grant the Legislature's motion for leave for late filing of its proposed amicus brief.

DATED: This 12th day of December, 2016.

Respectfully submitted,

BRENDA J. ERDOES
Legislative Counsel

By: /s/ Kevin C. Powers
KEVIN C. POWERS
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Attorneys for Amicus Curiae Nevada Legislature

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Nevada Legislative Counsel Bureau, Legal Division, and that on the 12th day of December, 2016, pursuant to NRAP 25 and NEFCR 8 and 9, I filed and served a true and correct copy of the foregoing Motion of Nevada Legislature for Leave for Late Filing of Amicus Curiae Brief, by electronic means to registered users of the Nevada Supreme Court's electronic filing system and by electronic mail, directed to the following:

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IN THE SUPREME COURT OF THE STATE OF NEVADA

NAVY FEDERAL CREDIT UNION,

Appellant,

vs.

SATICOY BAY LLC SERIES 1916
SUMMER POINT,

Respondent.

Supreme Court Case No. 69308

Appeal from Eighth Judicial District
Court, Clark County, Nevada,
Case No. A-14-703202-C

**AMICUS CURIAE BRIEF OF NEVADA LEGISLATURE
SUPPORTING FACIAL CONSTITUTIONALITY OF FORMER
STATUTES IN NRS 116.3116-116.31168 THAT REGULATED
NONJUDICIAL FORECLOSURE OF SUPERPRIORITY LIENS
BY HOMEOWNERS' ASSOCIATIONS**

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INTRODUCTION

The Nevada Legislature (Legislature), by and through its counsel the Legal Division of the Legislative Counsel Bureau under NRS 218F.720, hereby files an amicus brief supporting the facial constitutionality of the former statutes in NRS 116.3116-116.31168 that regulated nonjudicial foreclosure of superpriority liens by homeowners' associations (HOAs) for certain unpaid HOA dues. In 2015, the Legislature amended the former statutes and revised the foreclosure procedures. SB306, 2015 Nev.Stat., ch.266, §§1-7, at 1331-45. However, the facial challenge in this case is based on the former statutes as they existed before the amendments (the pre-amendment statutes).¹

Under NRAP 29(a), as an agency of the State of Nevada, the Legislature “may file an amicus curiae brief without the consent of the parties or leave of court.” Additionally, under NRS 218F.720(1), the Legislature may appear through its counsel in any action to protect its official interests. The determination of whether to appear is made by “the Legislative Commission, or the Chair of the Legislative Commission in cases where action is required before a meeting of the

¹ The Legislature’s amicus brief is limited solely to legal issues concerning the proper statutory interpretation of the pre-amendment statutes and their facial constitutionality under procedural due process. This brief does not address any other legal issues arising from the particular facts of this case, and it does not support either party concerning such other legal issues.

Legislative Commission is scheduled to be held.” Id. In this case, because such action is required, the Chair authorized filing of the Legislature’s amicus brief.

The Legislature has an interest in this case because Appellant asks this Court to facially invalidate long-standing statutory provisions that authorized HOAs to pursue nonjudicial foreclosure against units to enforce statutory superpriority liens for certain unpaid HOA dues. Because those provisions were in effect for 25 years, their facial invalidation could adversely affect hundreds of HOAs and call into question thousands of foreclosures, which could cloud property titles and undermine the stability and vitality of Nevada’s real estate markets.

Moreover, the Legislature has an interest in this case because in Bourne Valley Court Trust v. Wells Fargo Bank, 832 F.3d 1154 (9thCir.2016), a panel of the Ninth Circuit misapplied Nevada’s rules of statutory interpretation and, as a result of its erroneous interpretation, facially invalidated the pre-amendment statutes as violating the procedural due-process rights of all mortgage lenders. However, under well-established U.S. Supreme Court precedent, the panel should not have decided state-law questions of statutory interpretation but should have certified those state-law questions to this Court for final decision because the pre-amendment statutes were “susceptible of . . . an interpretation [that] would avoid or substantially modify the federal constitutional challenge to the statute[s].” Arizonans for Official English v. Arizona, 520 U.S. 43, 77-80 (1997) (quoting

Bellotti v. Baird, 428 U.S. 132, 148 (1976), and admonishing the Ninth Circuit for failing to certify state-law questions of statutory interpretation to the state’s highest court).²

Because this Court is the final arbiter of the meaning of Nevada state law, this Court is not bound by the Bourne Valley panel’s erroneous statutory interpretation of the pre-amendment statutes. See Blanton v. N. Las Vegas Mun. Ct., 103 Nev. 623, 633 (1987) (“[T]he decisions of the federal district court and panels of the federal circuit court of appeal are not binding upon this court.”), *aff’d*, Blanton v. City of N. Las Vegas, 489 U.S. 538 (1989). Therefore, the Legislature has an interest in having this Court provide a final and binding interpretation of the pre-amendment statutes based on Nevada’s rules of statutory interpretation.

Specifically, when Nevada’s rules of statutory interpretation are applied to the plain language and legislative history of the pre-amendment statutes, it is inescapable that the statutes—which expressly incorporated the deed-of-trust foreclosure procedures from NRS 107.090—required HOAs to provide lenders

² After the Bourne Valley panel issued its decision, the Legislature filed an amicus brief with the Ninth Circuit supporting Bourne Valley’s petition for rehearing or rehearing en banc. Ninth Circuit Case No. 15-15233, DktEntry: 51-1 (Sept. 6, 2016). Because the Ninth Circuit denied the petition on November 4, 2016, it is the Legislature’s understanding that Bourne Valley will be filing a petition for certiorari review with the U.S. Supreme Court, and the Legislature intends to file an amicus brief supporting that petition.

with notice that satisfied procedural due process. But even assuming there was any doubt and the statutes were susceptible of conflicting interpretations, one rendering them constitutional, and the other unconstitutional, the judicial branch must adopt the constitutional interpretation. Sheriff v. Wu, 101 Nev. 687, 689-90 (1985).

The rule which directs the judicial branch to adopt the constitutional interpretation is paramount to other rules of statutory interpretation because the duty of the judicial branch to save statutes from an unconstitutional interpretation is derived from the constitutional separation of powers which—out of respect for a coequal branch of government whose legislative members also take an oath to uphold the Constitution—requires the judicial branch to presume the legislative branch “legislates in the light of constitutional limitations.” Rust v. Sullivan, 500 U.S. 173, 191 (1991); Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Const. Trades Council, 485 U.S. 568, 574-75 (1988); Illinois v. Krull, 480 U.S. 340, 351 (1987); Rostker v. Goldberg, 453 U.S. 57, 64 (1981). Therefore, based on the constitutional separation of powers, the judicial branch must adopt any reasonable construction which will save the statutes from unconstitutionality. Rust, 500 U.S. at 190 (“[A]s between two possible interpretations of a statute, by one of which it would be unconstitutional and by the other valid, our plain duty is to adopt that which will save the Act.” (quoting Blodgett v. Holden, 275 U.S. 142, 148 (1927) (opinion of Holmes, J.))).

Consequently, the Legislature respectfully asks this Court to provide a final and binding interpretation of the pre-amendment statutes which is based on Nevada's rules of statutory interpretation and is consistent with the plain language and legislative history of the statutes. When the pre-amendment statutes are properly interpreted under Nevada's rules of statutory interpretation, the statutes survive a facial challenge because they expressly incorporated the deed-of-trust foreclosure procedures from NRS 107.090 and, as a result, they required HOAs to provide lenders with notice that satisfied procedural due process.

BACKGROUND

In SFR Invs. Pool 1 v. U.S. Bank, this Court held that the pre-amendment statutes created superpriority liens in favor of HOAs for certain unpaid HOA dues. 130 Nev.Adv.Op. 75, 334 P.3d 408, 412-14 (2014). This Court also held that if an HOA foreclosed on its superpriority lien, the foreclosure extinguished all junior or subordinate liens, including a mortgage lender's first deed of trust. Id. at 414-17.

In Bourne Valley Court Trust v. Wells Fargo Bank, Wells Fargo challenged the validity of an HOA's foreclosure of its superpriority lien which extinguished Wells Fargo's first deed of trust. 80 F.Supp.3d 1131, 1132-33 (D.Nev.2015), *vacated*, 832 F.3d 1154 (9thCir.2016). In the federal district court, Wells Fargo mounted only an as-applied challenge to the pre-amendment statutes, claiming that because no evidence was presented that the HOA provided Wells Fargo with

notice of the foreclosure before it occurred, the foreclosure violated its procedural due-process rights by extinguishing its first deed of trust without notice and an opportunity to protect its interests. Id. The federal district court rejected the as-applied challenge. Id. at 1134-35.

For the first time on appeal, Wells Fargo raised its facial challenge. 832 F.3d at 1158 n.3. In its facial challenge, Wells Fargo argued the pre-amendment statutes facially violated the procedural due-process rights of all mortgage lenders with liens on units because the statutes allegedly did not require HOAs to provide lenders with notice of foreclosures unless the lenders had “opted-in” by affirmatively requesting such notice under the framework in the statutes. In response, Bourne Valley argued that because the pre-amendment statutes expressly incorporated the deed-of-trust foreclosure procedures from NRS 107.090, the pre-amendment statutes required HOAs to provide lenders with notice under NRS 107.090 that satisfied procedural due process.

In a 2-1 decision, the Ninth Circuit panel agreed with Wells Fargo and interpreted the pre-amendment statutes to create an “opt-in” notice scheme. 832 F.3d at 1157-59. Despite the fact that the pre-amendment statutes expressly incorporated the deed-of-trust foreclosure procedures from NRS 107.090, the panel rejected interpreting the statutes as requiring HOAs to provide lenders with notice under NRS 107.090 because such an interpretation “would impermissibly render

the [opt-in] notice provisions of Chapter 116 entirely superfluous.” Id. at 1159. As a result of its erroneous statutory interpretation, the panel held that the “opt-in” notice scheme facially violated lenders’ procedural due-process rights. Id. at 1157-59. The panel also held that although nonjudicial foreclosure of HOA liens involved only private parties—rather than state actors—the state-action requirement was met because the pre-amendment statutes “unconstitutionally degraded” the lenders’ interests in their first deeds of trust. Id. at 1159-60.

Judge Wallace dissented on both grounds. Id. at 1160-65 (Wallace, J., dissenting). Judge Wallace disagreed with the panel’s holding that the state-action requirement was met because “an HOA is not a government actor and a nonjudicial foreclosure by definition takes place without government involvement.” Id. at 1161. Judge Wallace also disagreed with the panel’s statutory interpretation because it was contrary to the statutes’ plain language expressly incorporating the deed-of-trust foreclosure procedures from NRS 107.090 and because it was contrary to the canon that courts must adopt an interpretation that renders the statutes constitutional if fairly possible. Id. at 1163-65.

The Legislature agrees with Judge Wallace’s dissent, including his conclusion that the state-action requirement was not met. However, if the pre-amendment statutes are properly interpreted under Nevada’s rules of statutory construction, the statutes are facially constitutional under procedural due process, and there is no

need for this Court to reach the state-action issue because it is rendered moot. Therefore, although the Legislature agrees that the state-action requirement was not met, the Legislature does not present any arguments on the state-action issue in its amicus brief.

ARGUMENT

I. Standards for reviewing constitutional challenges.

When reviewing the constitutionality of statutes, this Court presumes the statutes are constitutional, and “[i]n case of doubt, every possible presumption will be made in favor of the constitutionality of a statute, and courts will interfere only when the Constitution is clearly violated.” List v. Whisler, 99 Nev. 133, 137 (1983). The presumption places a heavy burden on the challenger to make “a clear showing that the statute is unconstitutional.” Id. at 138. As a result, this Court will not invalidate a statute on constitutional grounds unless the statute’s invalidity appears “beyond a reasonable doubt.” Cauble v. Beemer, 64 Nev. 77, 101 (1947); State ex rel. Lewis v. Doron, 5 Nev. 399, 408 (1870) (“[E]very statute is to be upheld, unless plainly and without reasonable doubt in conflict with the Constitution.”).

Furthermore, it is a fundamental rule of constitutional review that “the judiciary will not declare an act void because it disagrees with the wisdom of the Legislature.” Anthony v. State, 94 Nev. 337, 341 (1978). Thus, in reviewing the

constitutionality of statutes, this Court is not concerned with the wisdom or policy of the statutes because “matters of policy or convenience or right or justice or hardship or questions of whether the legislation is good or bad are solely matters for consideration of the legislature and not of the courts.” King v. Bd. of Regents, 65 Nev. 533, 542 (1948).

II. The Bourne Valley panel’s opinion should not be given any persuasive weight because under U.S. Supreme Court precedent, the panel should have certified the state-law questions of statutory interpretation to this Court for final decision.

In Arizonans for Official English, the U.S. Supreme Court admonished the Ninth Circuit for failing to certify state-law questions of statutory interpretation to the Arizona Supreme Court because certification could have avoided or substantially modified the federal constitutional challenges to the state provisions. 520 U.S. at 77-80. In its admonishment, the Supreme Court explained that federal courts normally should not “consider the [c]onstitutionality of a state statute in the absence of a controlling interpretation of its meaning and effect by the state courts.” Id. at 75 (quoting Poe v. Ullman, 367 U.S. 497, 526 (1961) (Harlan, J., dissenting)). Instead, the Supreme Court warned federal courts that they have a duty to certify state-law questions of statutory interpretation to the state’s highest court when “the statute is susceptible of . . . an interpretation [that] would avoid or substantially modify the federal constitutional challenge to the statute.” Id. at 77 (quoting Bellotti, 428 U.S. at 148). As further explained by the High Court:

Warnings against premature adjudication of constitutional questions bear heightened attention when a federal court is asked to invalidate a State’s law, for the federal tribunal risks friction-generating error when it endeavors to construe a novel state Act not yet reviewed by the State’s highest court. Speculation by a federal court about the meaning of a state statute in the absence of prior state court adjudication is particularly gratuitous when . . . the state courts stand willing to address questions of state law on certification from a federal court.

Id. at 79 (internal quotations and citations omitted); Beth A. Hardy, Note, Federal Courts—Certification Before Facial Invalidation: A Return to Federalism, 12 W. New Eng. L. Rev. 217, 240 (1990) (“Certification before facial invalidation will further the principles of federalism which warn against unnecessary interference with state policy and unnecessary adjudication of constitutional questions.”).

In other cases, the Ninth Circuit has properly certified state-law questions of statutory interpretation to the state’s highest court, even if no party requested certification or all parties objected to certification. Parents Cmty. Schs. v. Seattle Sch. Dist., 294 F.3d 1085, 1086 (9thCir.2002); Doyle v. City of Medford, 565 F.3d 536, 537-44 (9thCir.2009). And given the U.S. Supreme Court’s admonishment in Arizonans for Official English, the Ninth Circuit has acknowledged its duty to certify such state-law questions, stating that “even when we find the plain language of state law dispositive, we have an obligation to consider whether novel state-law questions should be certified—and we have been admonished in the past for failing to do so.” Parents Cmty. Schs., 294 F.3d at 1086 (citations omitted).

Under NRAP 5, this Court has adopted a “liberal standard” that favors answering state-law questions certified by federal courts because the liberal standard “best serves the purposes of NRAP 5 [certification]: federalism, comity and judicial efficiency.” Volvo Cars v. Ricci, 122 Nev. 746, 750-51 (2006). Thus, this Court stands willing to answer state-law questions certified by federal courts when: (1) the answer may be determinative of part of the federal case; (2) there exists no clearly controlling Nevada precedent with respect to the questions; and (3) the answer will help settle important issues of law. Hartford Fire Ins. v. Trs. of Constr. Indus. Trust, 125 Nev. 149, 154 (2009).

In Bourne Valley, all three elements for NRAP 5 certification were met. First, this Court’s answer to the state-law questions of statutory interpretation would have been determinative of the facial validity of the pre-amendment statutes under the federal due-process challenge. Second, although this Court interpreted the pre-amendment statutes in SFR, 334 P.3d at 418, the Ninth Circuit panel did not consider that interpretation to be clearly controlling in Bourne Valley, so from the panel’s point of view, there was no clearly controlling Nevada precedent with respect to the state-law questions of statutory interpretation. Third, this Court’s answer to the state-law questions would have helped settle important issues of law because there are numerous cases pending in state and federal courts challenging

the facial validity of the pre-amendment statutes whose resolution is dependent on the proper statutory interpretation of the pre-amendment statutes.

Thus, the Ninth Circuit panel was presented with a textbook case of a facial challenge that required certification of the state-law questions of statutory interpretation to this Court for final decision because—as evidenced by the differing interpretations offered by the panel and dissent—the pre-amendment statutes were susceptible of a reasonable interpretation that, if adopted by this Court, would have eliminated or substantially modified the facial challenge in the federal case. Under such circumstances, the panel should not have decided the state-law questions of statutory interpretation but should have certified those state-law questions to this Court for final decision in compliance with Arizonans for Official English. Because the panel failed to certify the state-law questions to this Court for final decision in contravention of U.S. Supreme Court precedent, the panel’s opinion transgresses principles of federalism, comity and judicial efficiency, and it should not be given any persuasive weight.

III. The Bourne Valley panel’s opinion should not be given any persuasive weight because under U.S. Supreme Court precedent, the panel improperly reviewed the facial challenge based on the pre-amendment statutes instead of the current version.

Under U.S. Supreme Court precedent, federal courts must review the facial validity of a statute “as it now stands, not as it once did.” Hall v. Beals, 396 U.S. 45, 48 (1969); Cal. Bankers Ass’n v. Shultz, 416 U.S. 21, 53 (1974); Fusari v.

Steinberg, 419 U.S. 379, 387 (1975). When a statute is amended during appeal, federal courts must review the facial challenge “in light of presently existing [state] law, not the law in effect at the time that judgment was rendered.” Fusari, 419 U.S. at 387 (holding that statutory amendment during appeal rendered facial procedural due-process challenge moot). By contrast, in an as-applied challenge, federal courts review the validity of the statute based on the version in effect when it was applied to the facts of the case. Bigelow v. Virginia, 421 U.S. 809, 817-18 (1975) (holding that statutory amendment during appeal rendered facial challenge moot but did not preclude as-applied challenge to pre-amendment version).

While the Bourne Valley appeal was pending, the Legislature amended the statutes, but despite the amendments and contrary to U.S. Supreme Court precedent, the panel reviewed Wells Fargo’s facial challenge based on the pre-amendment statutes rather than the version “as it now stands.” Hall, 396 U.S. at 48. Thus, the panel improperly reviewed the facial challenge based on the pre-amendment statutes instead of the current version. Further, after the Legislature’s amendments, Wells Fargo was limited to challenging the pre-amendment statutes only as applied to the facts of the Bourne Valley case. As a result, after the Legislature’s amendments, Wells Fargo’s facial challenge to the pre-amendment statutes was rendered moot, and the panel exceeded its jurisdiction by declaring the pre-amendment statutes facially invalid. Princeton Univ. v. Schmid, 455 U.S. 100,

103 (1982). Consequently, the Bourne Valley panel’s opinion should not be given any persuasive weight because the panel improperly reviewed the facial challenge based on the pre-amendment statutes instead of the current version.

IV. The Bourne Valley panel’s opinion should not be given any persuasive weight because under U.S. Supreme Court precedent, the panel improperly reviewed the facial challenge before the as-applied challenge.

Under U.S. Supreme Court precedent, when parties raise both a facial challenge and as-applied challenge in federal court, the as-applied challenge “should ordinarily be decided first.” Bd. of Trs. v. Fox, 492 U.S. 469, 485 (1989); City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 447 (1985). “This is the preferred course of adjudication since it enables courts to avoid making unnecessarily broad constitutional judgments.” Cleburne, 473 U.S. at 447. This is also consistent with the rule that “a person to whom a statute may constitutionally be applied may not challenge that statute on the ground that it may conceivably be applied unconstitutionally to others in situations not before the Court.” L.A. Police Dep’t v. United Reporting Publ’g, 528 U.S. 32, 38 (1999).

Under this U.S. Supreme Court precedent, the Bourne Valley panel was required to decide Wells Fargo’s as-applied challenge first. If Wells Fargo’s procedural due-process rights were not violated by the pre-amendment statutes as applied to the facts of the Bourne Valley case, Wells Fargo could not mount a facial challenge to the statutes “on the ground that [the statutes] may conceivably

be applied unconstitutionally to others in situations not before the Court.” L.A. Police, 528 U.S. at 38. Therefore, before the panel considered the facial challenge, it was required to decide whether Wells Fargo’s procedural due-process rights were violated by the pre-amendment statutes as applied to the facts of the Bourne Valley case. See Jones v. Flowers, 547 U.S. 220, 226-29 (2006) (evaluating specific facts of case to determine whether property owner’s procedural due-process rights were violated by statutory foreclosure of tax lien); United Student Aid Funds v. Espinosa, 559 U.S. 260, 272 (2010) (evaluating specific facts of case to determine whether creditor’s procedural due-process rights were violated by discharge of debt in bankruptcy).

For example, nothing in the pre-amendment statutes prohibited HOAs from providing lenders with “notice reasonably calculated, under all the circumstances, to apprise [the lenders] of the pendency of the [foreclosure] and afford them an opportunity to present their objections.” Jones, 547 U.S. at 226. Therefore, before it considered the facial challenge, the panel was required to decide whether Wells Fargo received such notice under the facts of the Bourne Valley case. If Wells Fargo received such notice, its procedural due-process rights were not violated by the pre-amendment statutes as applied, and Wells Fargo could not mount a facial challenge. Thus, because the Bourne Valley panel decided the facial challenge first in contravention of U.S. Supreme Court precedent, its opinion should not be

given any persuasive weight because it improperly reviewed the facial challenge before the as-applied challenge.

V. The Bourne Valley panel’s opinion should not be given any persuasive weight because under U.S. Supreme Court precedent, the panel improperly invalidated the pre-amendment statutes on their face when the statutes were not unconstitutional under all circumstances.

Under U.S. Supreme Court precedent, for a facial challenge to succeed, Wells Fargo had to prove the pre-amendment statutes were unconstitutional under all circumstances:

A facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid. The fact that the [legislative] Act might operate unconstitutionally under some conceivable set of circumstances is insufficient to render it wholly invalid, since we have not recognized an “overbreadth” doctrine outside the limited context of the First Amendment.

United States v. Salerno, 481 U.S. 739, 745 (1987). Because a facial challenge requires unconstitutionality *under all circumstances*, Wells Fargo’s facial challenge should have failed because there were circumstances under which the pre-amendment statutes could operate constitutionally. Wash. State Grange v. Wash. State Republican Party, 552 U.S. 442, 449 (2008).

As discussed previously, nothing in the pre-amendment statutes prohibited HOAs from providing lenders with “notice reasonably calculated, under all the circumstances, to apprise [the lenders] of the pendency of the [foreclosure] and afford them an opportunity to present their objections.” Jones, 547 U.S. at 226. If

HOAs provided such notice, the statutes could operate constitutionally. Id. at 226-29; Mennonite Bd. of Missions v. Adams, 462 U.S. 791, 795-800 (1983). Given there were circumstances under which the pre-amendment statutes could operate constitutionally, Wells Fargo's facial challenge should have failed under U.S. Supreme Court precedent. Therefore, the Bourne Valley panel's opinion should not be given any persuasive weight because under U.S. Supreme Court precedent, the panel improperly invalidated the pre-amendment statutes on their face when the statutes were not unconstitutional under all circumstances.

VI. The Bourne Valley panel's opinion should not be given any persuasive weight because the panel misapplied Nevada's rules of statutory interpretation and, as a result, improperly interpreted the pre-amendment statutes as not requiring HOAs to provide lenders with notice under NRS 107.090 that satisfied procedural due process.

When interpreting state statutes, federal courts must apply the state's rules of statutory interpretation. In re First T.D. & Inv., 253 F.3d 520, 527 (9th Cir. 2001). Based on Nevada's rules of statutory interpretation in light of plain language and legislative history, the pre-amendment statutes—which expressly incorporated the deed-of-trust foreclosure procedures from NRS 107.090—required HOAs to provide lenders with notice that satisfied procedural due process.

Before 1989, NRS 107.090 required persons conducting deed-of-trust foreclosures to notify only those persons who had recorded requests to receive such notice. However, during the 1989 session, the Legislature amended the

statute to require notice, by registered or certified mail, to all recorded junior or subordinate lienholders, regardless of whether they requested the notice. AB440, 1989 Nev.Stat., ch.306, §1, at 644 (*Addendum:A12*). In committee hearings, Assemblyman Callister explained the purpose of the amendment:

What Mr. Callister sought was to require that anyone foreclosing would have to give notice of default to junior lienholders, regardless of whether there was a notice on file. This would mean the trustee would have to research the title, to find out if any junior liens (mechanics lien, hospital liens or other types of valid encumbrances recorded against the property) existed.

Hearing AB440 Assembly Comm. Judiciary, 65th Leg., at p.5 (Nev. Apr. 4, 1989) (*Addendum:A5*); Hearing AB440 Senate Comm. Judiciary, 65th Leg., at p.6 (Nev. June 1, 1989) (*Addendum:A8*).

During the next session in 1991, the Legislature enacted the HOA statutes incorporating NRS 107.090 into NRS 116.31168 as follows:

*The provisions of NRS 107.090 apply to the foreclosure of an association's lien as if a deed of trust were being foreclosed. The request must identify the lien by stating the names of the unit's owner and the common-interest community. The association must **also** give reasonable notice of its intent to foreclose to all holders of liens in the unit who are known to it.*

AB221, 1991 Nev.Stat., ch.245, §104, at 570-71 (codified as NRS 116.31168) (emphasis added) (*Addendum:A18*).

Based on its plain language, NRS 116.31168 required each HOA to provide notice to: (1) all recorded junior or subordinate lienholders in the same manner as

deed-of-trust foreclosures under NRS 107.090; and also (2) all holders of liens in the unit who were known to the HOA. Clearly, by requiring HOAs to provide notice to an additional category of lienholders who were separate and apart from the recorded lienholders under NRS 107.090, the Legislature intended HOAs to provide even more expansive notice than what was required in deed-of-trust foreclosures under NRS 107.090. Moreover, given that the Legislature—during the immediately preceding session—had just required more expansive notice to recorded lienholders in deed-of-trust foreclosures under NRS 107.090, it is unreasonable to think the Legislature intended for HOAs to provide less expansive notice to those same recorded lienholders in HOA lien foreclosures. See NL Indus. v. Eisenman Chem., 98 Nev. 253, 260 (1982) (“We will not construe statutes in a manner which will bring about an unreasonable result, or a result contrary to the legislature’s purpose.”).

During the next session in 1993, the Legislature amended NRS 116.31168 as follows:

The provisions of NRS 107.090 apply to the foreclosure of an association’s lien as if a deed of trust were being foreclosed. The request must identify the lien by stating the names of the unit’s owner and the common-interest community. ~~{The association must also give reasonable notice of its intent to foreclose to all holders of liens in the unit who are known to it.}~~

AB612, 1993 Nev.Stat., ch.573, §40, at 2373 (strike-out added between existing brackets) (*Addendum:A22*).

In place of the stricken language regarding the additional category of lienholders (“all holders of liens in the unit who are known to it”), the Legislature substituted the “opt-in” notice provisions codified in NRS 116.31163 and 116.311635 to again apply to an additional category of lienholders who were separate and apart from the recorded lienholders under NRS 107.090. AB612, 1993 Nev.Stat., ch.573, §§6-7, at 2355 (*Addendum:A21*). Under the “opt-in” notice provisions, HOAs were required to provide notice to this additional category of lienholders only if they requested the notice. However—and most importantly—the Legislature did not change the original mandate in NRS 116.31168 which required HOAs to provide notice to all recorded junior or subordinate lienholders in the same manner as deed-of-trust foreclosures under NRS 107.090.

Reading this legislative history in conjunction with the plain language of the statutes and Nevada’s rules of statutory interpretation, it is inescapable that the pre-amendment statutes required HOAs to provide lenders with notice that satisfied procedural due process. But even assuming there was any doubt and the pre-amendment statutes were susceptible of conflicting interpretations, one rendering them constitutional, and the other unconstitutional, the judicial branch must adopt the constitutional interpretation. Sheriff v. Wu, 101 Nev. 687, 689-90 (1985). The

U.S. Supreme Court has explained the purpose of the rule which directs the judicial branch to adopt the constitutional interpretation as follows:

[O]ne of the canon's chief justifications is that it allows courts to *avoid* the decision of constitutional questions. It is a tool for choosing between competing plausible interpretations of a statutory text, resting on the reasonable presumption that Congress did not intend the alternative which raises serious constitutional doubts.

Clark v. Martinez, 543 U.S. 371, 381 (2005).

Furthermore, the rule which directs the judicial branch to adopt the constitutional interpretation is paramount to other rules of statutory interpretation because the duty of the judicial branch to save statutes from an unconstitutional interpretation is derived from the constitutional separation of powers which—out of respect for a coequal branch of government whose legislative members also take an oath to uphold the Constitution—requires the judicial branch to presume the legislative branch “legislates in the light of constitutional limitations.” Rust v. Sullivan, 500 U.S. 173, 191 (1991); Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Const. Trades Council, 485 U.S. 568, 574-75 (1988); Illinois v. Krull, 480 U.S. 340, 351 (1987); Rostker v. Goldberg, 453 U.S. 57, 64 (1981). Therefore, based on the constitutional separation of powers, the judicial branch must adopt any reasonable construction which will save the statutes from unconstitutionality. Rust, 500 U.S. at 190 (“[A]s between two possible interpretations of a statute, by one of which it would be unconstitutional and by the other valid, our plain duty is

to adopt that which will save the Act.” (quoting Blodgett v. Holden, 275 U.S. 142, 148 (1927) (opinion of Holmes, J.))). As further explained by the High Court:

As was stated in Hooper v. California, 155 U.S. 648, 657 (1895), “[t]he elementary rule is that every reasonable construction must be resorted to, in order to save a statute from unconstitutionality.” This approach not only reflects the prudential concern that constitutional issues not be needlessly confronted, but also recognizes that Congress, like this Court, is bound by and swears an oath to uphold the Constitution. The courts will therefore not lightly assume that Congress intended to infringe constitutionally protected liberties or usurp power constitutionally forbidden it.

DeBartolo Corp., 485 U.S. at 575.

In Bourne Valley, the panel failed to follow this paramount rule of interpretation—which is of constitutional dimension—directing the judicial branch to adopt the constitutional interpretation of the pre-amendment statutes. Instead, the panel gave preference to a subordinate rule of interpretation disfavoring a statutory reading that would “render words or phrases superfluous or make a provision nugatory.” 832 F.3d at 1159 (quoting S. Nev. Homebuilders Ass’n v. Clark Cnty., 121 Nev. 446, 449 (2005)). By failing to follow the paramount rule of interpretation and declining to adopt the constitutional interpretation of the pre-amendment statutes, the panel improperly interpreted the statutes as not requiring HOAs to provide lenders with notice under NRS 107.090 that satisfied procedural due process.

Finally, the Bourne Valley panel highlighted the Legislature's 2015 amendments as evidence of statutory intent, stating if the statutes "already required [HOAs] affirmatively to provide notice, there would have been no need for the amendment." 832 F.3d at 1159 n.4. However, under Nevada's rules of statutory interpretation, statutory amendments can be legislative pronouncements of already existing law which are enacted to remove any doubt regarding interpretation of that existing law. PEBP v. LVMPD, 124 Nev. 138, 157 (2008); Sheriff v. Smith, 91 Nev. 729, 734 (1975); Welfare Div. v. Maynard, 84 Nev. 525, 529 (1968). For example, this Court stated in Maynard:

The respondent argues that since the legislature felt compelled to add this provision of irrevocability to the law, such documents must have been revocable before the amendment. Such is not necessarily the case. A statutory enactment can be simply a legislative pronouncement of already existing law.

84 Nev. at 529. Thus, under Nevada's rules of statutory interpretation, "when a statute's doubtful interpretation is made clear through subsequent legislation, we may consider the subsequent legislation persuasive evidence of what the Legislature originally intended." PEBP, 124 Nev. at 157 (internal quotations omitted).

The pre-amendment statutes—which expressly incorporated the deed-of-trust foreclosure procedures from NRS 107.090—required HOAs to provide lenders with notice that satisfied procedural due process. Because the 2015 amendments

were legislative pronouncements of already existing law in the pre-amendment statutes, the amendments were enacted to remove any doubt regarding the interpretation of that existing law. Therefore, the Bourne Valley panel's opinion should not be given any persuasive weight because the panel misapplied Nevada's rules of statutory interpretation and, as a result, improperly interpreted the pre-amendment statutes as not requiring HOAs to provide lenders with notice under NRS 107.090 that satisfied procedural due process.

VII. The Bourne Valley panel's opinion should not be given any persuasive weight because under U.S. Supreme Court precedent, the panel improperly invalidated the pre-amendment statutes on their face instead of severing the unconstitutional provisions.

Under U.S. Supreme Court precedent, "a federal court should not extend its invalidation of a statute further than necessary to dispose of the case before it," and the "normal rule [is] that partial, rather than facial, invalidation is the required course." Brockett v. Spokane Arcades, 472 U.S. 491, 502-04 (1985). Therefore, before facially invalidating state statutes, federal courts must determine whether unconstitutional provisions are severable:

Generally speaking, when confronting a constitutional flaw in a statute, we try to limit the solution to the problem. We prefer, for example, to enjoin only the unconstitutional applications of a statute while leaving other applications in force, or to *sever its problematic portions while leaving the remainder intact*.

Ayotte v. Planned Parenthood, 546 U.S. 320, 328-29 (2006) (emphasis added and citations omitted). To determine whether unconstitutional provisions are

severable, federal courts apply the state's rules of severability. Ariz. Libertarian Party v. Bayless, 351 F.3d 1277, 1283 (9thCir.2003).

The Legislature has adopted and codified rules of severability in Nevada's severability statute:

NRS 0.020 Severability.

1. If any provision of the Nevada Revised Statutes, or the application thereof to any person, thing or circumstance is held invalid, such invalidity shall not affect the provisions or application of NRS which can be given effect without the invalid provision or application, *and to this end the provisions of NRS are declared to be severable.*

2. *The inclusion of an express declaration of severability in the enactment of any provision of NRS or the inclusion of any such provision in NRS, does not enhance the severability of the provision so treated or detract from the severability of any other provision of NRS.*

Under NRS 0.020, there is a legislative presumption in favor of severability that must be applied to every provision of NRS, regardless of whether there is “an express declaration of severability in the enactment of any provision of NRS,” and the inclusion of such an express declaration “does not enhance the severability of the provision so treated or detract from the severability of any other provision of NRS.” In other words, the presence or absence of a severability clause in enacting legislation does not alter or affect NRS 0.020's legislative presumption in favor of severability, which means that the Legislature has declared its intent that all “provisions of NRS are declared to be severable,” regardless of whether there is a severability clause in enacting legislation.

This Court has found the Legislature’s “preference in favor of severability is set forth in NRS 0.020(1), which charges courts with preserving statutes to the extent they ‘can be given effect without the invalid provision or application.’” Sierra Pac. Power v. State Dep’t of Tax’n, 130 Nev.Adv.Op. 93, 338 P.3d 1244, 1247 (2014). However, this Court has explained:

[This] preference is not a mandate, and not all statutory language is severable. Before language can be severed from a statute, a court must first determine whether the remainder of the statute, standing alone, can be given legal effect, and whether preserving the remaining portion of the statute accords with legislative intent.

Id. Thus, NRS 0.020 does not create a conclusive presumption in favor of severability, but creates a rebuttable presumption which places the burden on the party opposing severance to prove under the two-part severability test that the offending provisions cannot be severed and the remaining provisions cannot be saved and given legal effect on their own without the offending provisions. Clark Cnty. v. City of Las Vegas, 92 Nev. 323, 334-37 (1976).

If the “opt-in” notice provisions are severed from the pre-amendment statutes, the remaining provisions—expressly incorporating the deed-of-trust foreclosure procedures from NRS 107.090—can be saved and given legal effect on their own without the offending provisions. Because the remaining provisions, standing alone, required HOAs to provide notice to all recorded junior or subordinate lienholders in the same manner as deed-of-trust foreclosures under NRS 107.090,

the remaining provisions required HOAs to provide lenders with notice that satisfied procedural due process.

Moreover, there is nothing in the legislative history to rebut the presumption in favor of severability or to suggest the Legislature intended for the pre-amendment statutes to be rendered unenforceable in their entirety if the “opt-in” notice provisions were invalidated. Therefore, given the legislative presumption in favor of severability under NRS 0.020 that must be applied to every provision of NRS, regardless of whether there is a severability clause in enacting legislation, the Legislature intended for the remaining provisions of the pre-amendment statutes to be given legal effect even after the invalid provisions were severed. Under such circumstances and based on U.S. Supreme Court precedent, the Bourne Valley panel was required to “sever [the] problematic portions while leaving the remainder intact.” Ayotte, 546 U.S. at 328-29. Accordingly, the panel’s opinion should not be given any persuasive weight because under U.S. Supreme Court precedent, the panel improperly invalidated the pre-amendment statutes on their face instead of severing the unconstitutional provisions.

CONCLUSION

Based on the foregoing, the Legislature respectfully asks this Court to provide a final and binding interpretation of the pre-amendment statutes which is based on Nevada’s rules of statutory interpretation and is consistent with the plain language

and legislative history of the statutes. When the pre-amendment statutes are properly interpreted under Nevada's rules of statutory interpretation, the statutes survive a facial challenge because they expressly incorporated the deed-of-trust foreclosure procedures from NRS 107.090 and, as a result, they required HOAs to provide lenders with notice that satisfied procedural due process.

DATED: This 12th day of December, 2016.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. We certify that the foregoing Amicus Brief complies with the formatting requirements of NRAP 29(d) and NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because the brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2010 in 14 point font and Times New Roman type.

2. We certify that the foregoing Amicus Brief complies with the type-volume limitations of NRAP 29(e) and NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), the brief is proportionately spaced, has a typeface of 14 points or more, and contains 6,471 words, which is less than the type-volume limit of 7,000 words.

3. We certify that we have read the foregoing Amicus Brief, and to the best of our knowledge, information and belief, the brief is not frivolous or interposed for any improper purpose. We further certify that the 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 appendix where the matter relied on is to be found. We understand that we may be subject to sanctions in the event that the brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED: This 12th day of December, 2016.

BRENDA J. ERDOES
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By: /s/ Kevin C. Powers

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Nevada Legislative Counsel Bureau, Legal Division, and that on the 12th day of December, 2016, pursuant to NRAP 25 and NEFCR 8 and 9, I filed and served a true and correct copy of the foregoing Amicus Brief, by electronic means to registered users of the Nevada Supreme Court's electronic filing system and by electronic mail, directed to the following:

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ADDENDUM

AB440, 65th Leg. (Nev. Mar. 24, 1989).....	A2
<u>Hearing AB440 Assembly Comm. Judiciary, 65th Leg. (Nev. Apr. 4, 1989)</u>	<u>A4</u>
<u>Hearing AB440 Senate Comm. Judiciary, 65th Leg. (Nev. June 1, 1989).....</u>	<u>A7</u>
AB440, 1989 Nev.Stat., ch.306, §1, at 644	A12
AB221, 1991 Nev.Stat., ch.245, §104, at 570-71	A18
AB612, 1993 Nev.Stat., ch.573, §§6-7, at 2355	A21
AB612, 1993 Nev.Stat., ch.573, §40, at 2373	A22

ASSEMBLY BILL NO. 440—ASSEMBLYMAN CALLISTER

MARCH 24, 1989

Referred to Committee on Judiciary

SUMMARY—Requires trustee under deed of trust to give notice of default and foreclosure sale to junior lienholders. (BDR 9-1209)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.



EXPLANATION—Matter in italics is new; matter in brackets [] is material to be omitted.

AN ACT relating to deeds of trust; requiring a trustee or other person authorized by a deed of trust to record a notice of default or exercise a power of sale to give notice of the default and sale to any person with a subordinate interest of record in the property; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 Section 1. NRS 107.090 is hereby amended to read as follows:
- 2 107.090 1. As used in this section, [a] "person with an interest" means
- 3 any person who has or claims any right, title or interest in, or lien or charge
- 4 upon, the real property described in the deed of trust and as evidenced by any
- 5 document or instrument filed or recorded in the office of the county recorder
- 6 of the county in which any part of the real property is situated.
- 7 2. A person with an interest desiring a copy of a notice of default or notice
- 8 of sale under a deed of trust with power of sale upon real property may at any
- 9 time [subsequent to] *after* recordation of [such] *the* deed of trust file in the
- 10 office of the county recorder of the county in which any part of the real
- 11 property is situated an acknowledged request for a copy of [such] *the* notice
- 12 of default or sale.
- 13 [3.] The request [shall] *must* state the name and address of the person
- 14 requesting copies of [such] *the* notices and identify the deed of trust by stating
- 15 the names of the parties thereto, the date of recordation and the book and
- 16 page where it is recorded.
- 17 [4.] 3. The trustee or person authorized to record the notice of default
- 18 shall, within 10 days [of recordation of such notice,] *after the notice of*
- 19 *default is recorded*, cause to be deposited in the United States mail an
- 20 envelope, registered or certified and with postage prepaid, containing a copy
- 21 of [such] *the* notice, addressed to [each] :
- 22 (a) *Each* person who has filed a request for a copy of [such notice.
- 23 5.] *the notice; and*

1 **(b) Each other person with an interest whose interest or claimed interest is**
2 **subordinate to the deed of trust.**

3 **4. The trustee or person authorized to make the sale shall, at least 20 days**
4 **before the date of sale, cause to be deposited in the United States mail an**
5 **envelope, registered or certified and with postage prepaid, containing a copy**
6 **of the notice of time and place of sale, addressed to each person [who has**
7 **filed a request for a copy of such notice.**

8 **6.] described in subsection 3.**

9 **5. No request [for a copy of any notice filed under] filed pursuant to the**
10 **provisions of [this section shall affect] subsection 2 affects the title to real**
11 **property.**

30

MINUTES OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Sixty-fifth Session
April 4, 1989

The Assembly Committee on Judiciary was called to order by Chairman, Robert Sader at 8:05 a.m. on Tuesday, April 4, 1989, in Room 240 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda, Exhibit B is the Attendance Roster.

MEMBERS PRESENT:

Robert M. Sader, Chairman
Gene T. Porter, Vice Chairman
John C. Carpenter
Vonne Chowning
Renee L. Diamond
Robert E. Gaston
James Gibbons
Bill Kissam
Mike McGinness
John Regan
Gaylyn J. Spriggs
Vincent L. Triggs
Wendell P. Williams
Jane A. Wisdom

STAFF MEMBERS PRESENT:

Jennifer Stern, Deputy Legislative Counsel

OTHERS PRESENT:

John Marvel, Assembly District 34
A. D. Jensen, American Federal Savings
John Sande, Nevada Bankers' Association
Lori Schlicker, Nevada Association of Counties
Ray Badger, Nevada Trial Lawyers' Association
Jerry Ash, President, Nevada Hospital Association
Nancy Angres, Welfare
Thom Reilly, Welfare
Pamela Bugge, State Industrial Insurance System

ASSEMBLY BILL NO. 440 - Requires trustee under deed of trust to give notice of default and foreclosure sale to junior lienholders.

Chairman Sader explained A.B. 440 was introduced by Assemblyman Callister, Assembly District No. 1, and continued with a description of current practice as well as what was hoped to be accomplished by the bill. Currently, when money was loaned on real property, deeds of trust (in Nevada) or mortgages were issued which gave a security in the real property. If the party borrowed from several different sources, there could be a number of deeds of trust. If the debtor defaulted, the only recourse was to foreclose on the property through a foreclosure sale. Any deed of trust had a trustor (i.e., the person who received a loan), a trustee (the person who administered the trust) and the beneficiary (i.e., the person who owed the money). When foreclosure took place, the trustee, oftentimes an institution, was the one conducting the foreclosure. In that circumstance, the law required an individual to file, with the County Recorder, a request or notice that he wanted to receive notice of foreclosure. Then, if any trustee foreclosed, they were required to issue that notice. This served to protect the lienholder's interest. Examples cited by Chairman Sader illustrated the possibility of an unsophisticated junior lienholder who would not necessarily receive notice because he had not filed the request with the County Recorder. Absent that, a foreclosure could go ahead without that junior lienholder having the opportunity to protect his security in some way.

What Mr. Callister sought was to require that anyone foreclosing would have to give notice of default to junior lienholders, regardless of whether there was a notice on file. This would mean the trustee would have to research the title, to find out if any junior liens (mechanics lien, hospital liens or other types of valid encumbrances recorded against the property) existed.

The Nevada Banker's Association was represented by John Sande who told the committee several banks had notified him of their concern about A.B. 440. Generally, he said, the law now provided that if someone wanted notice, they could request this by filing a "Notice of Request." If this law were to pass, the question would be, what would happen if a title company, in a title search, discovered multiple liens

on a piece of property and inadvertently failed to give notice to one person. Would this somehow defeat and make a non bone fide sale?

Mr. Porter asked what the mechanism was for locating someone listed on a deed of trust. Mr. Sande acknowledged this could be a problem if the deed of trust omitted an address. Mr. Sader offered that if it was decided that Mr. Callister's philosophy was correct, the burden of proof should be limited on the foreclosing party. The easiest mechanism for doing this was to require that the recorded document give an address or contact person.

Language which would clarify the bill and accomplish the intent was discussed with the conclusion to hold the bill until Mr. Sande and Mr. Callister could confer on suggested amendments.

Chairman Sader asked that the committee take action on bills ready to be considered.

ASSEMBLY BILL NO. 454 - Limits liability of local governments for medical expenses of prisoners.

An amendment prepared by Mr. Hillerby was distributed to committee members (see Exhibit E) and discussed. Attention was drawn to the penultimate line of the amendment, which was an addition -- not a deletion. Chairman Sader opined the amendment only served to cloud the law and did not illuminate a standard of what the legal liability of the county was. Today, the premise was that that was whatever the hospital charged. This could lend confusion that there was a statutory obligation now being imposed, and the rate was not what the hospital charged, it was a negotiable amount. Redefining, Chairman Sader concluded the amendment appeared to offer a different legal standard of what the rate was for a hospital.

After discussion Mr. Hillerby opined this was a one-case incident, and his clients were agreeable to leaving the law alone. Mr. Sader said he saw it as a cost-shifting bill, which had to be paid for either by the taxpayers, or by the consumers of health care. It was his opinion taxpayers as a whole should bear this burden.

ASSEMBLYMAN GASTON MOVED TO INDEFINITELY POSTPONE
A.B. 454.

MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Sixty-fifth Session
June 1, 1989

The Senate Committee on Judiciary was called to order by Chairman Sue Wagner, at 8:05 a.m., on Thursday, June 1, 1989, in Room 213 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Sue Wagner, Chairman
Senator R. Hal Smith, Vice Chairman
Senator Joe Neal
Senator Nicholas J. Horn
Senator Mike Malone
Senator Charles W. Joerg
Senator Dina Titus

STAFF MEMBERS PRESENT;

Jennifer Stern, Legal Counsel
Judith Jacobs, Committee Secretary

ASSEMBLY BILL 744 - Limits duty of seller of real property to disclose facts concerning property.

Testimony of Janet Hartmann and Chris Harris, Nevada Association of Realtors.

Ms. Hartmann introduced Mr. Harris, who read testimony as evidenced in Exhibit C.

Mr. Harris declared: "Under the existing law it could be interpreted that we were remiss in not disclosing, and if we do disclose we damage the seller, and if we don't disclose some buyers could feel that possibly they have been damaged."

In the absence of further testimony, the hearing was closed on A.B. 769.

ASSEMBLY BILL 440 - Makes various changes to provisions governing interests in property.

Testimony of Julian Sourwine, President, State Bar of Nevada.

Mr. Sourwine stated the changes from A.B. 440 would require that junior lienors be given notice of foreclosure sales. He said notice is generally given by title companies to all holders of recorded liens for trustee sales, whether or not they have requested notice. He explained, however, notice is only required to be given to those who have recorded such a request, but the change suggested by A.B. 440 would require that all junior lienors be notified, even if they have not requested notice.

Mr. Sourwine noted the change would protect unsophisticated people who make loans on real property in a junior lien position.

Mr. Sourwine said other changes in A.B. 440 will address policy regarding homestead exemptions. He alleged the statutes have been unclear as to whether the exemption refers to gross value or equity. He said the the state bar was not advocating which way the exemption should apply, the bar only seeks clarification. He pointed out the Assembly has defined the exemption as equity. He ascribed the basis of the definition to another statute, dealing with summary administration and the setting aside of estates without administration, which uses the term "value after deducting encumbrances," which is the method used to determine equity.

On the other hand, Mr. Sourwine added the existing homestead statute implies gross value rather than equity, as evidenced on page 4 line 31 of the bill. He indicated the homesteader's interest in the property would be the equity. He said if the legislature intends to protect the equity, A.B. 440 would clarify the law. He asserted, if the legislature intends to impose exemption of a maximum value of \$95,000, the bill should be amended accordingly.

Mr. Sourwine said that, although the homestead exemption does not apply to contractual liens, whether the exemption is gross or of equity could make a significant difference to a person in a bankruptcy or judgment execution proceeding. He declared there have been unreported findings from bankruptcy judges and other judges that disagree as to whether the homestead protection is of equity or relates only to the total value of the property in question.

Mr. Sourwine reiterated the state bar was not asking for a policy decision one way or the other, only clarification, in order to avoid ambiguity. In reply to Senator Malone's question, he indicated the best protection for the homeowner would be to exempt the equity.

Mr. Sourwine said Section 6 was designed to correct what the state bar felt was a mistake in legislation enacted in 1987. He said: "Until 1987, in case of summary administration in probate...a short cut procedure for estates...under \$100,000, there has never been...a requirement that the notice of the petition for probate and for summary administration be published...." He said the 1987 legislature amended several sections of the probate code to require publication. The change in Section 6 would delete the requirement for publication of the notice of a petition for probate in a summary administration.

Mr. Sourwine said Section 7 amends the probate statute dealing with setting aside the estate without administration, a procedure used with small estates under \$25,000. He said: "It first provides, now, that if there is a surviving spouse or child, then the estate must be set aside for their benefit....We propose to insert the word 'minor' wherever 'child' or 'children' appears, so that the...setting aside is limited in this fashion: if there is a surviving spouse or minor child, then the estate must be set aside for their benefit. But if there is neither...then whoever is entitled to it can get it."

Mr. Sourwine suggested the problem comes from occasions when there is not a surviving spouse, but there may be adult children, and the estate leaves property to someone other than the child. He explained that, under

current law, in order to distribute the property, the estate must go through probate or a summary administration even though it is a small estate under \$25,000. AB. 440 would allow the same procedure to be used when there are no minor children or when someone else is entitled to inherit, without the necessity of the full probate or summary administration proceeding.

There was no further testimony, and the hearing was closed on A.B. 440.

SENATE BILL 142 - Makes technical correction to Nevada Revised Statutes.

Senator Wagner noted the committee had processed S.B. 142 early in the session, but the Assembly had attached several amendments. She said the alterations were proposed to resolve conflicts with Assembly Bill 8, Assembly Bill 167, and Assembly Bill 428.

SENATOR JOERG MOVED TO CONCUR IN S.B. 142.

SENATOR MALONE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

ASSEMBLY BILL 508 - Makes various changes relating to actions for support of children.

Senator Wagner said: "We voted not to recede on our action [Assembly Bill] 508 yesterday, and I've assigned a conference committee of myself, Mr. Joerg, and Ms. Titus..."

Senator Wagner briefed the committee on the action of the Assembly Committee on Judiciary relating to bills with prison impact. She said some of those bills with major fiscal impact had been referred to the Assembly Committee on Ways and Means, some are being amended to reduce the impact, and some have no fiscal impact. She declared her intent to schedule all those bills for two consecutive days. She said an expert from the National Council on Crime and Delinquency would be available to testify on the projection of inmate population figures and make an estimate of the impact of those bills. She

added: "Obviously, we're going to be looking at the bills, not just if they have an impact, but whether we think they're good policy as well."

The committee discussed the prison population, the general impact on the state from longer sentencing, and prison facilities.

ASSEMBLY BILL 440.

SENATOR JOERG MOVED TO DO PASS A.B. 440.

SENATOR HORN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

ASSEMBLY BILL 744.

SENATOR SMITH MOVED TO DO PASS A.B. 744.

SENATOR HORN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

ASSEMBLY BILL 767.

SENATOR JOERG MOVED TO DO PASS A.B. 767.

SENATOR HORN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

ASSEMBLY BILL 768.

SENATOR HORN MOVED TO DO PASS A.B. 768.

SENATOR JOERG SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Assembly Bill No. 440—Assemblyman Callister

CHAPTER 306

AN ACT relating to property; requiring a trustee or other person authorized by a deed of trust to record a notice of default or exercise a power of sale to give notice of default and sale to any person with a subordinate interest of record in the property; clarifying that the homestead exemption applies to the value of equity in the property; eliminating the requirement of publication of notice of certain matters concerning the summary administration of estates; allowing an estate of a certain value to be set aside when there is no surviving spouse or minor children of the deceased; and providing other matters properly relating thereto.

[Approved June 9, 1989]

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 107.090 is hereby amended to read as follows:

107.090 1. As used in this section, [a] “person with an interest” means any person who has or claims any right, title or interest in, or lien or charge upon, the real property described in the deed of trust and as evidenced by any document or instrument filed or recorded in the office of the county recorder of the county in which any part of the real property is situated.

2. A person with an interest desiring a copy of a notice of default or notice of sale under a deed of trust with power of sale upon real property may at any time [subsequent to] *after* recordation of [such] *the* deed of trust file in the office of the county recorder of the county in which any part of the real property is situated an acknowledged request for a copy of [such] *the* notice of default or sale.

[3.] The request [shall] *must* state the name and address of the person requesting copies of [such] *the* notices and identify the deed of trust by stating the names of the parties thereto, the date of recordation and the book and page where it is recorded.

[4.] 3. The trustee or person authorized to record the notice of default shall, within 10 days [of recordation of such notice,] *after the notice of default is recorded*, cause to be deposited in the United States mail an envelope, registered or certified and with postage prepaid, containing a copy of [such] *the* notice, addressed to [each] :

(a) *Each* person who has filed a request for a copy of [such notice.

5.] *the notice; and*

(b) *Each other person with an interest whose interest or claimed interest is subordinate to the deed of trust.*

4. The trustee or person authorized to make the sale shall, at least 20 days before the date of sale, cause to be deposited in the United States mail an envelope, registered or certified and with postage prepaid, containing a copy of the notice of time and place of sale, addressed to each person [who has filed a request for a copy of such notice.

6.] *described in subsection 3.*

5. No request [for a copy of any notice filed under] *filed pursuant to* the provisions of [this section shall affect] *subsection 2 affects* the title to real property.

Sec. 2. NRS 21.090 is hereby amended to read as follows:

21.090 1. The following property is exempt from execution, except as otherwise specifically provided in this section:

(a) Private libraries not to exceed \$1,500 in value, and all family pictures and keepsakes.

(b) Necessary household goods, as defined in 16 C.F.R. § 444.1(i) as that section existed on January 1, 1987, and yard equipment, not to exceed \$3,000 in value, belonging to the judgment debtor to be selected by him.

(c) Farm trucks, farm stock, farm tools, farm equipment, supplies and seed not to exceed \$4,500 in value, belonging to the judgment debtor to be selected by him.

(d) Professional libraries, office equipment, office supplies and the tools, instruments and materials used to carry on the trade of the judgment debtor for the support of himself and his family not to exceed \$4,500 in value.

(e) The cabin or dwelling of a miner or prospector, his cars, implements and appliances necessary for carrying on any mining operations and his mining claim actually worked by him, not exceeding \$4,500 in total value.

(f) One vehicle if the judgment debtor's equity does not exceed \$1,000 or the creditor is paid an amount equal to any excess above that equity.

(g) For any pay period, 75 percent of the disposable earnings of a judgment debtor during that period, or for each week of the period 30 times the minimum hourly wage prescribed by section 6(a)(1) of the federal Fair Labor Standards Act of 1938 and in effect at the time the earnings are payable, whichever is greater. Except as otherwise provided in paragraph (n), the exemption provided in this paragraph does not apply in the case of any order of a court of competent jurisdiction for the support of any person, any order of a court of bankruptcy or of any debt due for any state or federal tax. As used in this paragraph, "disposable earnings" means that part of the earnings of a judgment debtor remaining after the deduction from those earnings of any amounts required by law, to be withheld.

(h) All fire engines, hooks and ladders, with the carts, trucks and carriages, hose, buckets, implements and apparatus thereunto appertaining, and all furniture and uniforms of any fire company or department organized under the laws of this state.

(i) All arms, uniforms and accouterments required by law to be kept by any person, and also one gun, to be selected by the debtor.

(j) All courthouses, jails, public offices and buildings, lots, grounds and personal property, the fixtures, furniture, books, papers and appurtenances belonging and pertaining to the courthouse, jail and public offices belonging to any county of this state, all cemeteries, public squares, parks and places, public buildings, town halls, markets, buildings for the use of fire departments and military organizations, and the lots and grounds thereto belonging and appertaining, owned or held by any town or incorporated city, or dedicated by the town or city to health, ornament or public use, or for the use of any fire or military company organized under the laws of this state and all lots, buildings and other school property owned by a school district and devoted to public school purposes.

(k) All money, benefits, privileges or immunities accruing or in any manner growing out of any life insurance, if the annual premium paid does not

exceed \$1,000. If the premium exceeds that amount, a like exemption exists which bears the same proportion to the money, benefits, privileges and immunities so accruing or growing out of the insurance that the \$1,000 bears to the whole annual premium paid.

(l) The homestead as provided for by law.

(m) The dwelling of the judgment debtor occupied as a home for himself and family, [not exceeding] *where the amount of equity held by the judgment debtor in the home does not exceed \$95,000 in value* [, where] and the dwelling is situate upon lands not owned by him.

(n) All property in this state of the judgment debtor where the judgment is in favor of any state for failure to pay that state's income tax on benefits received from a pension or other retirement plan.

2. No article or species of property mentioned in this section is exempt from execution issued upon a judgment to recover for its price, or upon a judgment of foreclosure of a mortgage or other lien thereon.

3. Any exemptions specified in subsection (d) of section 522 of the Bankruptcy Act of 1978 (92 Stat. 2586) do not apply to property owned by a resident of this state unless conferred also by subsection 1, as limited by subsection 2, of this section.

Sec. 3. Chapter 115 of NRS is hereby amended by adding thereto a new section to read as follows:

As used in this chapter, unless the context otherwise requires:

1. "Equity" means the amount that is determined by subtracting from the fair market value of the property, the value of any liens excepted from the homestead exemption pursuant to subsection 3 of NRS 115.010.

2. "Homestead" means the property consisting of either a quantity of land, together with the dwelling house thereon and its appurtenances, or a mobile home whether or not the underlying land is owned by the claimant, to be selected by the husband and wife, or either of them, or a single person claiming the homestead.

Sec. 4. NRS 115.010 is hereby amended to read as follows:

115.010 1. The homestead [, consisting of either a quantity of land, together with the dwelling house thereon and its appurtenances, or a mobile home whether or not the underlying land is owned by the claimant, not exceeding \$95,000 in value, to be selected by the husband and wife, or either of them, or a single person claiming the homestead,] is not subject to forced sale on execution [,] or any final process from any court, except as provided by [subsection 2.] subsections 2 and 3.

2. The exemption provided in subsection 1 extends only to that amount of equity in the property held by the claimant which does not exceed \$95,000 in value.

3. The exemption provided in subsection 1 does not extend to process to enforce the payment of obligations contracted for the purchase of the [premises,] property, or for improvements made thereon, including any mechanic's lien lawfully obtained, or for legal taxes, or for:

(a) Any mortgage or deed of trust thereon executed and given; or

(b) Any lien to which prior consent has been given through the acceptance

of property subject to any recorded declaration of restrictions, deed restriction, restrictive covenant or equitable servitude, by both husband and wife, when that relation exists.

[3.] 4. Any declaration of homestead which has been filed before July 1, 1989, shall be deemed to have been amended on that date by extending the homestead exemption commensurate with any increase in the [value of] *amount of equity held by the claimant in the property* selected and claimed for the exemption up to the [value] *amount* permitted by law on that date, but the increase does not impair the right of any creditor to execute upon the property when that right existed before July 1, 1989.

Sec. 5. NRS 115.050 is hereby amended to read as follows:

115.050 1. Whenever execution has been issued against the property of a party claiming the property as a homestead, and the creditor in the judgment makes oath before the judge of the district court of the county in which the [premises are] *property* is situated, that the [cash value of the premises] *amount of equity held by the claimant in the property* exceeds, to the best of the creditor's information and belief, the sum of \$95,000, the judge shall, upon notice to the debtor, appoint three disinterested and competent persons as appraisers to estimate and report as to the [value of the premises,] *amount of equity held by the claimant in the property*, and if the [value] *amount of equity* exceeds the sum of \$95,000, *determine* whether the [premises] *property* can be divided so as to leave the [premises amounting] *property* subject to the homestead exemption without material injury.

2. If it appears, upon the report, to the satisfaction of the judge that the [premises] *property* can be thus divided, he shall order the excess to be sold under execution. If it appears that the [premises] *property* cannot be thus divided, and the [value thereof] *amount of equity held by the claimant in the property* exceeds the exemption allowed by this chapter, he shall order the entire [premises] *property* to be sold, and out of the proceeds the sum of \$95,000 to be paid to the defendant in execution, and the excess to be applied to the satisfaction on the execution. No bid under \$95,000 may be received by the officer making the sale.

3. When the execution is against a husband or wife, the judge may direct the \$95,000 to be deposited in court, to be paid out only upon the joint receipt of the husband and wife, and the deposit possesses all the protection against legal process and voluntary disposition by either spouse as did the original homestead . [premises.]

Sec. 6. NRS 145.030 is hereby amended to read as follows:

145.030 Notice of a petition for the probate of a will and the issuance of letters testamentary or for letters of administration [,] *must be given as provided in NRS 155.010*, and the notice to creditors must be given as provided in NRS 155.020.

Sec. 7. NRS 146.070 is hereby amended to read as follows:

146.070 1. When a person dies leaving an estate, the gross value of which after deducting any encumbrances does not exceed \$25,000, and there is a surviving spouse or *minor* child or *minor* children of the deceased, the estate must not be administered upon, but the whole thereof, after directing such payments as may be deemed just, must be, by an order for that purpose, assigned and set apart for the support of the surviving spouse or *minor*

children, or for the support of the *minor* child or *minor* children, if there is no surviving spouse. Even though there is a surviving spouse, the court may, after directing such payments, set aside the whole of the estate to the *minor* child or *minor* children, [according to the subserviency of] *if it is in* their best interests.

2. When there is no surviving spouse or *minor* child of the deceased and the gross value of a decedent's estate, after deducting any encumbrances, does not exceed \$25,000, upon good cause shown therefor, the judge may order that the estate must not be administered upon but the whole thereof must be assigned and set apart:

First: To the payment of funeral expenses, expenses of last illness, and creditors, if there are any; and

Second: Any balance remaining to the claimant or claimants entitled thereto.

3. All proceedings taken under this section, whether or not the decedent left a will, must be originated by a verified petition containing:

(a) A specific description of all of the decedent's property.

(b) A list of all the liens, encumbrances of record at the date of his death.

(c) An estimate of the value of the property.

(d) A statement of the debts of the decedent so far as known to the petitioner.

(e) The names, ages and residences of the decedent's heirs, devisees and legatees.

The petition may include a prayer that if the court finds the gross value of the estate, less encumbrances, does not exceed \$25,000, the estate be set aside as provided in this section.

4. The petitioner shall give notice of the petition and hearing in the manner provided in NRS 155.010 to the decedent's heirs, devisees and legatees. The notice must include a statement that a prayer for setting aside the estate to the spouse, or *minor* child or *minor* children, as the case may be, is included in the petition.

5. No court or clerk's fees may be charged for the filing of any petition in, or order of court thereon, or for any certified copy of the petition or order in an estate not exceeding \$1,000 in value.

6. If the court finds that the gross value of the estate, less encumbrances, does not exceed the sum of \$25,000, the court may direct that the estate be distributed to the father or mother of any minor heir or legatee, with or without the filing of any bond, or may require that a general guardian be appointed and that the estate be distributed to the guardian, with or without bond as in the discretion of the court seems to be in the best interests of the minor. The court may direct the manner in which the money may be used for the benefit of the minor.

Sec. 8. Section 2 of this act becomes effective at 12:01 a.m. on October 1, 1989.

(h) The assets of a gaming licensee who is a sole proprietorship are transferred to a partnership in which 80 percent of the ownership of the partnership interests are held by the former sole proprietor [.] ;

(i) A licensed gaming partnership is dissolved and the assets of the gaming establishment are transferred to a corporation, at least 80 percent of the stock of which is held by the former partnership interests; or

(j) A licensed gaming partnership is dissolved or reorganized and the assets of the gaming establishment are transferred to a partnership, at least 80 percent of the ownership of which is held by the former partnership interests.

3. Except as otherwise provided in this section, no credit or refund of fees or taxes may be made because a gaming establishment ceases operation.

Assembly Bill No. 221—Committee on Judiciary

CHAPTER 245

AN ACT relating to property; enacting the Uniform Common-Interest Ownership Act; appropriately modifying chapters 117 and 278A of NRS as they remain in effect for condominiums and planned unit developments created before the effective date of this act; and providing other matters properly relating thereto.

[Approved June 5, 1991]

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Title 10 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 128, inclusive, of this act.

Sec. 2. This chapter may be cited as the Uniform Common-Interest Ownership Act.

Sec. 3. Applicability of this chapter is governed by sections 47 to 54, inclusive, of this act.

Sec. 4. In the declaration and bylaws (section 87 of this act), unless specifically provided otherwise or the context otherwise requires, and in this chapter, the words and terms defined in sections 5 to 36, inclusive, of this act have the meaning ascribed to them in those sections.

Sec. 5. 1. "Affiliate of a declarant" means any person who controls, is controlled by or is under common control with a declarant.

2. A person "controls" a declarant if the person:

(a) Is a general partner, officer, director or employer of the declarant;

(b) Directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote or holds proxies representing, more than 20 percent of the voting interest in the declarant;

(c) Controls in any manner the election of a majority of the directors of the declarant; or

(d) Has contributed more than 20 percent of the capital of the declarant.

from time to time postpone the sale by such advertisement and notice as it considers reasonable or, without further advertisement or notice, by proclamation made to the persons assembled at the time and place previously set and advertised for the sale.

2. On the day of sale originally advertised or to which the sale is postponed, at the time and place specified in the notice or postponement, the person conducting the sale may sell the unit at public auction to the highest cash bidder. Unless otherwise provided in the declaration or by agreement, the association may purchase the unit and hold, lease, mortgage or convey it. If so authorized to purchase, the association may enter a credit bid up to the amount of the unpaid assessments and any permitted costs, fees and expenses incident to the enforcement of its lien.

3. After the sale, the person conducting the sale shall make, execute and, after payment is made, deliver to the purchaser, or his successor or assign, a deed without warranty which conveys to the grantee all title of the unit's owner to the unit, and shall apply the proceeds of the sale for the following purposes in the following order:

- (a) The reasonable expenses of sale;
 - (b) The reasonable expenses of securing possession before sale, holding, maintaining, and preparing the unit for sale, including payment of taxes and other governmental charges, premiums on hazard and liability insurance, and, to the extent provided for by agreement between the association and the unit's owner, reasonable attorney's fees and other legal expenses incurred by the association;
 - (c) Satisfaction of the association's lien;
 - (d) Satisfaction in the order of priority of any subordinate claim of record;
- and
- (e) Remittance of any excess to the unit's owner.

Sec. 103. 1. The recitals in such a deed of:

- (a) Default and the recording of the notice of delinquent assessment and notice of default and election to sell;
 - (b) The elapsing of the 60 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 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 sections 101 and 102 of this act vests in the purchaser the title of the unit's owner without equity or right of redemption.

Sec. 104. 1. The provisions of NRS 107.090 apply to the foreclosure of an association's lien as if a deed of trust were being foreclosed. The request must identify the lien by stating the names of the unit's owner and the common-interest community. The association must also give reasonable notice of its intent to foreclose to all holders of liens in the unit who are known to it.

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2. An association may, after recording a notice of default and election to sell, waive the default and withdraw the notice or any proceeding to foreclose. The association is thereupon restored to its former position and has the same rights as though the notice had not been recorded.

Sec. 105. (Deleted by amendment.)

Sec. 106. The association shall keep financial records sufficiently detailed to enable the association to comply with section 117 of this act. All financial and other records must be made reasonably available for examination by any unit's owner and his authorized agents.

Sec. 107. With respect to a third person dealing with the association in the association's capacity as a trustee, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers. A third person, without actual knowledge that the association is exceeding or improperly exercising its powers, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the association in its capacity as trustee.

Sec. 108. 1. Sections 108 to 128, inclusive, of this act apply to all units subject to this chapter, except as otherwise provided in subsection 2 or as modified or waived by agreement of purchasers of units in a common-interest community in which all units are restricted to nonresidential use.

2. Neither a public offering statement nor a certificate of resale need be prepared or delivered in the case of a:

- (a) Gratuitous disposition of a unit;
- (b) Disposition pursuant to court order;
- (c) Disposition by a government or governmental agency;
- (d) Disposition by foreclosure or deed in lieu of foreclosure;
- (e) Disposition to a dealer;
- (f) Disposition that may be canceled at any time and for any reason by the purchaser without penalty; or
- (g) Disposition of a unit in a planned community in which the declaration limits the maximum annual assessment of any unit to not more than \$300, as adjusted pursuant to section 46 of this act if:

(1) The declarant reasonably believes in good faith that the maximum stated assessment will be sufficient to pay the expenses of the planned community;

(2) The declaration cannot be amended to increase the assessment during the period of declarant's control without the consent of all units' owners; and

(3) The planned community is not subject to any developmental rights.

Sec. 109. 1. Except as otherwise provided in subsection 2, a declarant, before offering any interest in a unit to the public, shall prepare a public offering statement conforming to the requirements of sections 110 to 114, inclusive, of this act.

2. A declarant may transfer responsibility for preparation of all or a part of the public offering statement to a successor declarant (sections 83 and 84 of this act) or to a dealer who intends to offer units in the common-interest