BREF
ADAMS LAW GROUP, LTD.
JAMES R. ADAMS, ESQ.
Nevada Bar No. 6874
8010 W. Sahara Ave, Suite 260
Las Vegas, Nevada 89117
Tel: 702-838-7200
Fax: 702-838-3636
james@adamslawnevada.com

PUOY K. PREMSRIRUT, ESQ., INC.
Puoy K. Premsrirut, Esq.
Nevada Bar No. 7141
520 S. Fourth Street, 2nd Floor
Las Vegas, NV 89101
(702) 384-5563
(702)-385-1752 Fax
ppremsrirut@brownlawlv.com
Attorneys for amicus curiae

ENTERED
12/7/13

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY, REAL ESTATE DIVISION; STATE OF NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY, FINANCIAL INSTITUTIONS DIVISION;

Plaintiffs,

vs.

ACCOUNT RECOVERY SOLUTIONS, LLC; ATC ASSESSMENT COLLECTIONS, LLC; NEVADA ASSOCIATION SERVICES, INC.; SILVER STATE TRUSTEE SERVICES LLC; TERRA WEST COLLECTIONS GROUP, LLC, DOE PERSONS 1 THROUGH 10; DOE ENTITIES 1 THROUGH 10; DOE CORPORATIONS 1 THROUGH 10;

Defendants

Case No. A-13-688795-B
Dept. No. XXIX

MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF ON ORDER SHORTENING TIME & AMICUS CURIAE BRIEF

Date of Hearing: January 9, 2014
Time of Hearing: 9:00 a.m.

COMES NOW, HIGHER GROUND, LLC, a Nevada limited liability company; RRR HOMES, LLC, a Nevada limited liability company; TRIPLE BRAIDED CORD, LLC, a Nevada limited liability company; EQUISOURCE, LLC, a Nevada limited liability company;

EQUISOURCE HOLDINGS, LLC, a Nevada limited liability company; APPLETON PROPERTIES, LLC, a Nevada limited liability company; CUSTOM ESTATES, LLC, a Nevada limited liability company; KINGFUTT'S PFM LLC, a Nevada limited liability company (aka KING FUTTS PFM LLC SERIES LV PROPERTIES); IKON HOLDINGS, LLC., WINGBROOK CAPITAL LLC, a Nevada limited liability company; ELSINORE, LLC, a Nevada limited liability company; KECJ, LLC a Nevada limited liability company; MONTESA, LLC, a Nevada limited liability company; EKNV, LLC, a Nevada limited liability company; EK NEVADA, INC., a Nevada corporation; and PREM INVESTMENTS, LLC, by and through their counsel, James R. Adams, Esq., and files this MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF ON ORDER SHORTENING TIME & AMICUS CURIAE BRIEF concerning vital issues related to Plaintiffs' Complaint and the multiple motions filed with this Court.

Dated this 15th day of December, 2013.

ADAMS LAW GROUP, LTD.

JAMES R. ADAMS, ESQ.
Nevada Bar No. 6874
8010 W. Sahara Ave, Suite 260
Las Vegas, Nevada 89117
Tel: 702-838-7200
Fax: 702-838-3636
james@adamslawnevada.com

PUOY K. PREMSRIRUT, ESQ., INC.
Puoy K. Premsrirut, Esq.
Nevada Bar No. 7141
520 S. Fourth Street, 2nd Floor
Las Vegas, NV 89101
(702) 384-5563
(702)-385-1752 Fax
ppremsrirut@brownlawlv.com
Attorneys for amicus curiae

EX PARTE MOTION FOR ORDER SHORTENING TIME

COME NOW, proposed friends of the court, hereby file this Ex Parte Motion for Order Shortening Time requesting that the MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF ON ORDER SHORTENING TIME & AMICUS CURIAE BRIEF be heard on an order shortening time based upon the reasons set forth in the affidavit of James R. Adams, Esq. contained herein below.

ORDER SHORTENING TIME

It appearing to the satisfaction of the Court, and good cause appearing therefor,

IT IS HEREBY ORDERED that the foregoing MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF ON ORDER SHORTENING TIME & AMICUS CURIAE BRIEF shall be heard on the 21 day of January, 2014, at the hour of 9:00 a.m., in Department No. 29.

DATED AND DONE this 16th day of Dec., 2013.

DISTRICT COURT JUDGE

AFFIDAVIT OF JAMES R. ADAMS, ESQ. IN SUPPORT OF THE EX PARTE APPLICATION FOR AN ORDER SHORTENING TIME

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

JAMES R. ADAMS, ESQ., being first duly sworn, deposes and says:

1. That Affiant is an attorney with the law firm of ADAMS LAW GROUP, LTD., and duly licensed to practice law in the State of Nevada, and Adams Law Group, Ltd. represents proposed friends of the court in the above captioned case.
2. That Affiant has personal knowledge of the facts set forth hereunder and is competent

to testify to same.

3. On January 9, 2014, multiple hearings will occur in Department 29 regarding dismissal and summary judgment over issues related to the super priority lien and whether collection costs can be included in a homeowners' association's lien and whether collection agencies are violating laws related thereto.

4. This Counsel represents multiple clients whose interests will be affected by this Court's ruling.

5. For the reasons cited in this Motion, the proposed friends of the court wish to file this Amicus Brief and appear at the hearings to apprise the Court of facts and law which may be crucial to this Court's decision in the matter.

6. Therefore, Plaintiff requests the Court sign the Order Shortening Time to allow the proposed friends of the court's MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF ON ORDER SHORTENING TIME & AMICUS CURIAE BRIEF to be heard on January 9, 2014, which is the same date as the hearing the parties' competing Motions.

FURTHER AFFIANT SAYETH NAUGHT.

JAMES R. ADAMS, ESQ.

SUBSCRIBED AND SWORN to before me

this 16th day of December, 2013.

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
DAVID KNIGHT
Appt. No. 13-12058-1
My Appt. Expires Oct 28, 2017

David Knight
NOTARY PUBLIC

MEMORANDUM OF POINTS AND AUTHORITIES

I.

Factual & Procedural Summary

Prem Investments, LLC., through its counsel, Adams Law Group, Ltd., filed a Petition for Advisory Opinion with the Nevada Department of Business and Industry in the summer of 2010 (Ex. 1). The Nevada Department of Business and Industry administers both the Nevada Financial Institutions Division ("FID") (which licenses and regulates collection agencies) and the Nevada Real Estate Division ("NRED") (which regulates common interest communities). The nature of the Petition was to seek an advisory opinion and/or declaratory order on the meaning and scope of NRS 116.3116. NRS 116.3116 is a statute which creates a statutory lien on a homeowner's property for all assessments, fines and fees owed by that homeowner to his homeowners' association. The statute also states that the lien is extinguished by the foreclosure of the first mortgage lender with the exception of a limited portion of the lien. That limited portion has been dubbed the "super priority lien" and is capped at a figure equaling 9 months of a homeowners' association assessments plus certain external repair costs. Thus, a bank or investor who buys at auction takes the property subject to the limited "super priority lien."

Prem Investments, LLC., was one such investor. Thus, Prem Investments, LLC., had an interest in having the State of Nevada issue an advisory opinion or declaratory order on the definition, breadth and scope of NRS 116.3116. It should be noted that in 2010 Prem Investments, LLC was not a party in any action before the District Court, or any administrative agency arbitration proceeding concerning NRS 116.3116, and, therefore, had an absolute legal right under NAC 232.040 to request the advisory opinion and declaratory order. Prem Investments, LLC was owned by a number of membership holders, including attorney Puoy Premsrirut.

Defendants are debt collectors who collect the past due assessments owed to homeowners' associations by delinquent homeowners ("Defendants" or "Debt Collectors"). They also collect the "super priority lien" amounts from banks, investors and government supported agencies like Fannie

Mae and Freddie Mac who take title to properties at foreclosure auctions. For years, Defendants have been violating NRS 116.3116 by drastically overcharging banks, investors and government supported agencies for collection fees which far exceed the super priority lien amount.

A. Arbitration

In 2010, Adams Law Group, Ltd., was retained by a group of investors (not Prem Investments, LLC) to institute litigation against the Debt Collectors for their unlawful collection practices. An arbitration (which has been stayed pending Supreme Court review of a procedural issue) ensued. In the arbitration, it was the position of the Debt Collectors that NRS 116.3116(2) permits the addition of collection fees over and above the super priority lien. It was the position of the investors that consistent with the plain language of the statute, the super priority lien is capped at 9 months of association assessments (plus repair costs) and cannot be exceeded. In response to a summary judgment motion on the meaning of NRS 116.3116(2), on October 28, 2010, Real Estate Division Arbitrator, Persi Mishel, ruled that the investors were correct. The super priority lien is capped at 9 months of assessments. Therefore, after foreclosure, the collection of any amounts over and above the super priority lien is inconsistent with NRS 116.3116(2). The Arbitrator's ruling in favor of the investors on their declaratory relief claim effectively adjudicated the fundamental issue in the entire arbitration.

B. The FID Declaratory Order and NRED's Advisory Opinion

In November of 2010, (about 5 months after Prem Investments, LLC had filed its Petition for Declaratory Order and Advisory Opinion with the Nevada Department of Business and Industry), the Nevada Financial Institutions Division responded to Prem Investments, LLC's Petition. The Financial Institutions Division issued a Declaratory Order and Advisory Opinion which was consistent with the position that the super priority was capped at a figure equaling 9 months of assessments (Ex. 2). The Financial Institutions Division ordered its licensees to limit their collection fees to an amount consistent with Nevada law.

In December of 2010, certain of the Debt Collectors instituted litigation against the FID to

enjoin it from enforcing its Declaratory Order. Judge Johnson granted the Debt Collectors' Motion for Preliminary Injunction and ruled that the FID did not have the jurisdiction to interpret NRS 116 in the regulation of its own licensees. After an appeal was heard, the Nevada Supreme Court issued its opinion in August of 2012 wherein the Court ruled that the FID did not have jurisdiction to interpret NRS 116, but the CCICCH and NRED did:

> The language of this provision [NRS 116.615] is clear that the CCICCH and the Real Estate Division are responsible for regulating and administering the chapter. There is no provision granting any other commission or department the authority to regulate or interpret the language of the chapter. NRS Chapter 116 also addresses the issuance of advisory opinions, stating that "[t]he [Real Estate] Division shall provide by regulation for the filing and prompt disposition of petitions for declaratory orders and advisory opinions as to the applicability or interpretation of: (a) [a]ny provision of this chapter or chapter 116A or 116B of NRS." NRS 116.623(1)(a).
>
> The language of NRS 116.615 and NRS 116.623 is clear and unambiguous. Thus, we apply a plain reading. See Westpark Owners' Ass'n v. Dist. Ct., 123 Nev. 349, 357, 167 P.3d 421, 427 (2007). We will also read NRS Chapter 116 and NRS Chapter 649 in a way that harmonizes them as a whole. Southern Nev. Homebuilders v. Clark County, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005). Based on a plain, harmonized reading of these statutes, the responsibility of determining which fees may be charged, the maximum amount of such fees, and whether they maintain a priority, rests with the Real Estate Division and the CCICCH.
>
> *State, Dep't of Bus. & Indus., Fin. Institutions Div. v. Nevada Ass'n Servs., Inc.*, 294 P.3d 1223, 1227 (Nev. 2012)

In November of 2012, this Counsel was contacted by Director Terry Johnson of the Nevada Department of Business and Industry via email. He stated:

> In light of the Court's ruling earlier this year in the matter of State of Nevada, Financial Institutions Div. vs. Nevada Assn. Services, et al., it appears the appropriate entity to render the requested opinion would be the Real Estate Division of the Department of Business & Industry.
>
> Accordingly, I recently met with representatives of the Real Estate Division and their legal counsel to discuss the various advisory opinion requests that had been submitted, including yours, regarding the super priority lien. The determination was made that the Real Estate Division would issue an advisory opinion responsive to the questions presented in the various opinion requests. Please be advised that this advisory opinion should be finalized within the next 30-45

days.

Thanks,

TERRY JOHNSON
Director

(Ex. 3)

In December of 2012, Adv. Op. 13-01 was published by the Nevada Real Estate Division. In short, almost 2 ½ years after Prem Investments, LLC., filed its Petition for Advisory Opinion with the Nevada Department of Business and Industry, the Nevada Real Estate Division responded to the Petition (Ex. 4). Thus, contrary to the Debt Collectors' allegation that NRED's Advisory Opinion was "*sua sponte*," it was, in fact, in response to Prem Investments' Petition.

C. The Investors' Litigations and Court Rulings

In the last several years, purchasers of homes at first mortgage foreclosure auctions have instituted declaratory relief actions requesting from the court the meaning of NRS 116.3116(2), i.e., is there a cap on the super priority lien of a figure equaling 9 months of assessments (plus certain repair costs). At least 8 District Courts[1] have declared that NRS 116.3116(2) calls for such a cap. This Counsel has argued 7 of those 8 cases. No district court (save Judge Jackie Glass in 2006) have ruled differently. In the 7 cases argued by this Counsel, the concept of whether or not "collection costs" could be included in a homeowners' association lien was never directly at issue. It was not at issue because in every such case, the foreclosed homeowner was at least 9 months delinquent in his assessments by the time the foreclosure investor purchased the property. Therefore, whether collection costs could be included in the prioritized portion of the lien simply was not important because in each such case, the 9 month assessment cap was always hit by the delinquent assessments alone. The issue in these cases was whether or not there was a cap to the super priority lien of a

---

[1] Judge Denton (Case No. A647850,) Judge Gonzalez (Case No. A636948,) Judge Scann (Case No. A651107,) Judge Allf (Case No. A666569,) Judge Barker (Case No. A663304,) Judge Silver (Case No. 658044,) Judge Sturman (Case No. A680828,) Judge Berry (Case No. CV12-02254).

figure equaling 9 months of assessments, no matter what was included in the lien.

Regardless, save one, the orders of the district courts have never stated that "costs of collection" can be included in a homeowners' association lien. Instead the language of the orders mirrored NRS 116.3116's language, that, "any **penalties, fees, charges, late charges, fines and interest** charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments under this section." For example:

1. The Wingbrook Order - "While **assessments, penalties, fees, charges, late charges, fines and interest may be included within the Assessment Cap Figure**, in no event can the total amount of the Assessment Cap Figure exceed an amount equaling 9 times the homeowners' association's monthly assessment amount...." (Ex. 5 Wingbrook Order);

2. The Ikon Order - "Unless an association's declaration otherwise provides, **any penalties, fees, charges, late charges, fines and interest charged pursuant to NRS 116.3102(1) (j) to (n), inclusive, are enforceable in the same manner as assessments are enforceable under NRS §116.3116**. Thus, while such penalties, fees, charges, late charges, fines and interest are not actual "assessments," they may be enforced in the same manner as assessments are enforced, i.e., by inclusion in the association's General Statutory Lien against the unit." (Ex. 6, Ikon Order)

3. The Aliante Order - "Thus, **while assessments, penalties, fees, charges, late charges, fines and interest may be included within the Super Priority Lien**, in no event can the total amount of the Super Priority Lien exceed an amount equaling 9 months of the Defendant's regular monthly assessment amount...." (Ex. 7, Aliante Order).

In each such case, the language of the orders mirrored the language of NRS 116.3116. The phrase "costs of collecting," with its own statutory definition under NRS 116.310313, was never included in the Wingbrook, Ikon or Aliante orders. While the law allows a homeowners' association

to charge such "costs of collecting" to the delinquent homeowner, there is no statutory authority for a homeowners' association to include those "costs of collecting" in the lien. Thus, the Plaintiffs have requested a declaration from this Court that "costs of collecting" under NRS 116.310313 are not included in the lien described in NRS 116.3116. Conspicuously, the phrase "costs of collecting" as defined by NRS 116.310313 appears nowhere in NRS 116.3116. In fact, NRS 116.3116 makes specific reference only to other particular costs as listed in NRS 116.3102, not to any "costs of collecting" listed in NRS 116.310313. This, one must presume, was an intentional act on the part of the legislature to limit the constituent elements of the lien to that which is clearly cited in NRS 116.3116, i.e., assessments, plus those costs as particularly listed in NRS 116.3102. In short, if the legislature wanted to include "costs of collecting" in the lien, it would have said so in NRS 116.3116.

The State of Nevada now requests this Court issue a declaratory judgment and injunctive relief on the issues of whether the super priority lien is capped and whether costs of collecting can be included within a homeowners' association's lien (in essence, a declaration of the meaning of NRS 116.3116). The Court, through the numerous motions filed by the parties, has been asked to make several determinations related thereto. This amicus brief concerns itself with the following issues:

1. Does NRED have standing to seek a declaratory judgment over the meaning of NRS 116.3116 (a statute within its jurisdiction)?
2. Are the CCICCH and Nevada homeowners associations "indispensable" parties in this action pursuant to NRCP 19, and if so, what should the Court do?
3. Does the law require that the CCICCH make a determination whether a violation has occurred by a collection agency before Plaintiffs can file this action for declaratory relief and injunctive relief?
4. Does the fact that Plaintiffs and Defendants disagree over the meaning of a law mean that Defendants could not have violated it?

5. Does the NRED Advisory Opinion have legal force and effect?

6. Does the CCICCH's Advisory Opinion have legal force and effect?

7. Is Plaintiffs' declaratory relief claim over the meaning of a statute barred by NRS 38.310?

II

LEGAL ARGUMENT

1. COURTS HAVE DISCRETION TO ACCEPT AND REVIEW AMICUS BRIEFS

It should be noted that Nevada public policy strongly favors the adjudication of matters on their merits (see, e.g., *Stubli v. Big D Int'l Trucks, Inc.*, 107 Nev. 309, 316, 810 P.2d 785, 789-90 (1991)), and therefore dictates the full inclusion of opinions on matters of public importance such as this. The ruling of this Court will have direct impact upon hundreds of thousands of Nevada homeowners, including consumers, investors, banks, and governmental agencies. In a case such as this, there is little reason a trial judge should not have discretion to permit the participation of individuals who are fundamentally affected by the Court's ruling, especially if the participation may be helpful to the court. For example:

> Although the rules of practice do not specifically provide a vehicle for a nonparty to obtain permission to submit briefs or to appear as an amicus curiae, the rules do not prohibit such a request. See Thalheim v. Greenwich, 256 Conn. 628, 639–40, 775 A.2d 947 (2001). Permission to appear as amici curiae, however, rests in the sound discretion of the trial court. Id., at 644, 775 A.2d 947. The trial court in this case determined that it would not be proper for the proposed amici, who are both attorneys, to testify as expert witnesses at trial and to appear as amici curiae. We conclude that the trial court did not abuse its discretion in making that determination. *Witty v. Planning & Zoning Comm'n of Town of Hartland*, 66 Conn. App. 387, 396, 784 A.2d 1011, 1017-18 (2001)

Nor is there, "... authority that would require an interested party... to intervene, as opposed to filing as amicus." *Parsons v. State, Dep't of Soc. & Health Servs.*, 129 Wash. App. 293, 302, 118 P.3d 930, 934 (2005). Importantly, amicus curiae presentations assist the court by broadening its perspective on the issues raised by the parties; among other services, they facilitate informed judicial consideration of a wide variety of information and points of view that may bear on important legal

questions. *In re Marriage Cases*, 43 Cal. 4th 757, 183 P.3d 384 (2008).

Especially in this case, where Defendants have called into question the very Petition for Advisory Opinion which this Counsel drafted and filed on behalf of one of the listed friends of the court, i.e., the very Petition which Defendants claim to be non-existent, this brief can provide vital procedural and factual background to the Court which may be critical so the Court can make an informed decision as to the merits of each parties' position. Further, several of the friends of the court were parties to the very cases in which Defendants incorrectly claim that there exist orders which state that "costs of collecting" could be included in the lien. Input can be given to the Court as to what actually was at issue and what was argued.

2. NRED HAS STANDING TO SEEK A DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF AGAINST ANYONE REGARDING THE CONSTRUCTION OF A LAW

In its Motion to Dismiss, Defendants proclaim that, "...only the FID, as governing authority of Defendants, is entitled to seek declaratory relief against Defendants." (Nevada Association Services ("NAS") Motion to Dismiss, 6:17-18). Certainly the FID is one governmental agency which may do so,[2] but why cannot any other governmental agency seek a declaratory judgment regarding the construction of a law which happens to affect Nevada limited liability companies such as Defendants? Does not the Nevada Declaratory Relief Act grant standing to any interested party who seeks a determination of the construction of a law and does it not also grant such a party the right to obtain a declaration of rights and legal status thereunder? Is NRED not an interested party to this action? After all, it is a real estate statute, NRS 116.3116, over which NRED seeks the judicial declaration. Are the Debt Collectors also not interested parties to this action? Is it is not they who dispute NRED's Advisory Opinion regarding NRS 116.3116 and is it not they who seek their own ruling regarding NRS 116.3116 from this Court?

The Nevada Declaratory Relief Act (NRS 30.040) states the following:

> Any person interested under a deed, written contract or other writings constituting a contract, or whose rights, status or other legal relations

[2] See NRS 648.400

> are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

NRED seeks a declaration that one of the statutes under its jurisdiction has been violated.[3] It clearly has a legal interest in doing so. As the Nevada Supreme Court has noted, "The provisions of this chapter [NRS 116] must be administered by the [Real Estate] Division, subject to the administrative supervision of the Director of the Department of Business and Industry." *State, Dep't of Bus. & Indus., Fin. Institutions Div. v. Nevada Ass'n Servs., Inc.*, 294 P.3d 1223, 1227 (Nev. 2012).

Thus, not only does NRED seek a declaratory ruling that Defendants have violated NRS 116.3116, but it must also be keenly noted that the Debt Collectors have moved for summary judgment seeking their own ruling. What relief do they request? They request a determination that they have <u>not</u> violated NRS 116.3116. The controversy has therefore been clearly cast. The competing interests of the parties have been clearly defined. Can the Defendants honestly state there is no controversy over the construction of a statute? Can they honestly argue that neither they, nor NRED have an interest in that controversy? The Nevada Declaratory Relief Act governs this dispute and it grants NRED standing to request that this Court grant declaratory relief, i.e., that it rule that a statute under the NRED's jurisdiction has a particular meaning, and that certain acts of various

---

[3] 57. *All Defendants' practice of including "costs of collecting" in the associations' liens is in direct violation of NRS 116.3116(1).*

58. *All Defendants' practice of charging more than 9 times the monthly assessment for common expenses (plus Abatement Costs) for the associations' super priority liens is in direct violation of NRS 116.3116(2).*

59. *Defendants continue these practices even after the issuance of the NRED Opinion in opposition of such practices.*

60. *Thus, a true and ripe controversy exists between Plaintiffs and Defendants as to the proper interpretation of NRS 116.3116.* (Complaint at ¶57 and 58).

parties are not in conformance thereof.

By a mere review of the pleadings and briefs in this action it is clear that the parties hold differing views of the law and request relief in conformity with their views. As the Nevada Supreme Court in *Kress v. Corey* has held:

> 'The requisite precedent facts or conditions which the courts generally hold must exist in order that declaratory relief may be obtained may be summarized as follows: (1) there must exist a justiciable controversy; that is to say, a controversy in which a claim of right is asserted against one who has an interest in contesting it; (2) the controversy must be between persons whose interests are adverse; (3) the party seeking declaratory relief must have a legal interest in the controversy, that is to say, a legally protectible interest; and (4) the issue involved in the controversy must be ripe for judicial determination. *Kress v. Corey 65 Nev. 1, 189 P.2d 352 (1948).*

Thus, NRED must possess the following attributes under Nevada law to proceed in this action:

1. It must have a right to assert that NRS 116.3116 caps the super priority lien amount and that no collection fees and costs may be included in a homeowners' associations' lien. **However, the Supreme Court of Nevada has already ruled that NRED has this authority. It is, in fact, responsible for the administration of NRS 116.3116.** See *State, Dep't of Bus. & Indus., Fin. Institutions Div. v. Nevada Ass'n Servs., Inc.*, 294 P.3d 1223, 1227 (Nev. 2012).
2. The Debt Collectors against whom NRED's right is asserted has an interest in contesting it. **This fact is apparent as the Debt Collectors assert this right in their Motion for Summary Judgment.**
3. NRED's interest in the determination that NRS 116.3116 caps the super priority lien amount and that no collection fees and costs may be included in a homeowners' associations' lien is diverse from the Debt Collectors' interest in contesting such a determination. **This fact is obvious by a simple review of NRED's Motion for Summary Judgment and the Debt Collectors' Motion for Summary Judgment which ask for exactly opposite rulings from this Court;**

4. NRED has a legal interest in this Court's declaration that NRS 116.3116 caps the super priority lien amount and that no collection fees and costs may be included in a homeowners' associations' lien is diverse from the Debt Collectors' interest in contesting such a determination. **As NRED is the agency tasked with interpretation, administration and regulation of NRS 116, there is no dispute NRED has a legal interest as further supported by the Nevada Supreme Court.**

5. The issue as announced above is ripe for judicial determination. This factor needs little discussion as hundreds of lawsuits have been filed to date essentially seeking determinations which are requested by the parties to this Court.

Further, and even more fundamentally, NRED is lawfully imbued with statutory powers to bring suit against ANY PERSON who violates NRS Chapter 116. Any person most certainly means any Debt Collector. For example, NRS 116.795 clearly states:

> 1. If the Commission or the Division has reasonable cause to believe, based on evidence satisfactory to it, that any person violated or is about to violate any provision of this chapter, any regulation adopted pursuant thereto or any order, decision, demand or requirement of the Commission or Division or a hearing panel, the Commission or the Division may bring an action in the district court for the county in which the person resides or, if the person does not reside in this State, in any court of competent jurisdiction within or outside this State, to restrain or enjoin that person from engaging in or continuing to commit the violations or from doing any act in furtherance of the violations.

In short, if NRED does not have standing to bring suit and seek a declaratory ruling over the construction of one of its own real estate statutes, who does? Of course, the Supreme Court has already answered this question as follows, "... the [Real Estate] Division may do all things necessary and convenient to carry out the provisions of this chapter...." *State, Dep't of Bus. & Indus., Fin. Institutions Div. v. Nevada Ass'n Servs., Inc.*, 294 P.3d 1223, 1227 (Nev. 2012). Suing anyone, including Debt Collectors, for violations of NRS 116.3116 and seeking declaratory and injunctive relief would certainly appear to be necessary and convenient to carry out the provisions of NRS 116.

3. UNDER NRCP 19(A), NEITHER THE CCICCH NOR HOMEOWNERS ASSOCIATIONS ARE INDISPENSABLE PARTIES AS COMPLETE RELIEF MAY BE ACCORDED TO THE CURRENT PARTIES WITHOUT A JOINDER

NRCP 19(a) describes only two situations where a person must be joined if feasible. Provided the joinder will not deprive the Court of jurisdiction, the first of the two situations is as follows, "(1) in the person's absence complete relief cannot be accorded among those already parties."

Therefore, the first question the Court must answer is if the CCICCH and the homeowners associations are not joined, will both Plaintiffs and Defendants obtain complete relief by the Court's determination of the issues contained in the Complaint? In other words, will NRED, the FID and the Department of Business and Industry get what they want against the Debt Collectors (i.e., what they asked for in the Complaint) if the Court rules that the super priority lien is capped, or that collection costs cannot be included in a lien? The answer is yes. What the Plaintiffs request in the present action is a declaration that the Defendants' practice of including "costs of collecting" in the associations' liens is in direct violation of NRS 116.3116(1) and that Defendants' practice of charging more than 9 times the monthly assessment for common expenses (plus Abatement Costs) for the associations' super priority liens is also in direct violation of NRS 116.3116(2). (See ¶57 and 58 of the Complaint). They also seek injunctive relief against the Debt Collectors to stop them from violating the law. If the Court rules in conformity to the State's requested relief, the State gets what it wants, i.e., a way to stop the Defendants from violating the law. Complete relief is therefore accorded to the Plaintiffs without the joinder of any additional parties.

Conversely, if the Debt Collectors win and the Court declares that the super priority lien in not capped or that collection costs can be included within the lien, the Defendants get what they want, i.e., a judicial determination that they do not violate NRS 116.3116 and that they may continue with their collection activities. Complete relief is therefore accorded to the Defendants without joinder of any additional parties. The fact that the CCICCH or the homeowners associations may claim an interest in how this litigation comes out, does not mean that complete relief cannot be

accorded to those already parties without a joinder. In short, complete relief can be accorded the current parties without the necessity of the joinder of anyone.

4. NEITHER THE CCICCH NOR THE HOMEOWNERS ASSOCIATIONS HAVE CLAIMED AN INTEREST IN THIS LITIGATION

The second of the two situations where joinder is necessary is as follows:

> (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest.

It must be immediately noted that no person, commission or homeowners' association has yet claimed an interest relating to the subject of this action. Thus, by the plain language of NRCP 19 (a)(2), until such a "claim of interest" is made by a non-party, the issue of joinder is not ripe for determination.

However, if this Court rules that homeowners associations are indispensable parties, then so too are Nevada homeowners. The Defendants argue that homeowners associations and the CCICCH are "indispensable" parties to this action. Why Defendants did not also argue that Nevada homeowners are also "indispensable" parties to this action is not readily perceived. In fact, it is the homeowners who actually pay the collection costs which are the subject of this action. It is the homeowners who pay the excessive super priority lien costs. If the Court rules that collection costs can be included in a lien or that the super priority lien is not capped at 9 months of assessments, it is the homeowners' lien which is affected. It is the Nevada homeowners whose rights are implicated and whose wallets are lightened if the Court rules in favor of Defendants. Indeed, if there are any indispensable parties to this action, the Nevada homeowner is one such party. In that regard, if the Court determines that homeowners associations are "indispensable" parties, representative class homeowners shall move to intervene in this action on a class-wide basis so that their rights may be properly represented.

5. THE CCICCH IS NOT AN INDISPENSABLE PARTY

Under NRCP 19(a)(2), in order to be joined, the CCICCH must claim, "... an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest...." Not only has the CCICCH not claimed an interest in this action, but it has no interest to protect.

Defendants argue that the CCICCH is a necessary party because it has published its own advisory opinion which allegedly differs from NRED's. However, because the CCICCH's advisory opinion was fugitive (with absolutely no statutory or regulatory authority,) it is of no force and effect. Thus, the CCICCH can have no interest in a declaratory ruling that affects an advisory opinion which it had no authority to publish in the first place. It is but a null document with no legal effect.

What governmental agencies can issue advisory opinions? The law is quite clear on this issue.

> 1. The Division shall provide by regulation for the filing and prompt disposition of petitions for declaratory orders and advisory opinions as to the applicability or interpretation of:
>
> (a) Any provision of this chapter or chapter 116A or 116B of NRS...
>
> 5. The Division shall:
>
> (a) Respond to a petition filed pursuant to this section within 60 days after the date on which the petition is submitted for consideration; and
>
> (b) Upon issuing its declaratory order or advisory opinion, mail a copy of the declaratory order or advisory opinion to the petitioner.
>
> Nev. Rev. Stat. Ann. § 116.623 (West)

Conspicuously absent from NRS 116.623 is any reference to the CCICCH. In short, unlike the clear authorization for the Real Estate Division to issue advisory opinions, Nevada has no statute or regulation specifically authorizing the CCICCH to issue advisory opinions. That jurisdiction is statutorily bestowed upon NRED. Of course NRED has issued its advisory opinion in the form of Adv. Op. 13-01 declaring the super priority lien capped at 9 months of assessments and declaring that no collection costs may be included in a homeowners' assessment lien. Pursuant to Nevada's

Supreme Court, this Court is to take "great deference" to agency interpretations of Nevada statutes over which they have jurisdiction. (*Imperial Palace v. State, Dep't Taxation*, 108 Nev. 1060, 1067, 843 P.2d 813, 818 (1992); *Dep't of Taxation v. Daimler Chrysler*, 121 Nev. 541,549, 119 P.3d 135, 139 (2005); *Thomas v. City of N. Las Vegas*, 122 Nev. 82, 101, 127 P.3d 1057, 1070 (2006) (citing *Chevron U.S.A. v. Not. Res. Def. Council*, 467 U.S. 837 (1984)).

Thus the question is posed for the Court, if the CCICCH had no legal authority to publish an advisory opinion, what legal effect is the Court to give such a document? The answer should be, "none." In short, the CCICCH has no interest in this action as the very instrument over which it could claim an interest is ineffectual as a matter of law.

6. DISMISSAL IS NOT THE PROPER REMEDY UNDER NRCP 19

If this Court determines that the Defendants are correct and that certain parties are indispensable to this action, what is the remedy? At this early stage of the litigation, it is surely not dismissal. The remedy is clearly defined in NRCP 19(a), "If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff." The remedy is clear, the Court is to join the absent party, not dismiss the action.

7. THE CCICCH IS NOT THE ONLY ENTITY WHO CAN DETERMINE A VIOLATION OF NRS 116. THE DISTRICT COURT HAS SUCH JURISDICTION

Defendants have argued that only the CCICCH may declare a violation of NRS 116.3116. Defendants argue the CCICCH has "exclusive" jurisdiction in this regard (i.e., to the exclusion of a District Court). However, no such "exclusive" jurisdiction of the CCICCH can be found in any statute, nor would such a statute be constitutional anyway. Defendants cite NRS 116.750 for its novel proposition.

> 1. In carrying out the provisions of NRS 116.745 to 116.795, inclusive, the Division and the Ombudsman have jurisdiction to investigate and the Commission and each hearing panel has jurisdiction to take appropriate action against any person who commits a violation, including, without limitation:
>
> (a) Any association and any officer, employee or agent of an

association.

Nev. Rev. Stat. Ann. 116.750 (West)

The word "exclusive" is not found in the statute. The statute merely states that the CCICCH has jurisdiction to take appropriate action against any person who commits a violation. It certainly does not state the District Court is divested of its jurisdiction to declare the meaning of laws or to issue injunctive relief.

Moreover, as NRS 116.795 clearly states, "1. If the... Division has reasonable cause to believe... that any person... is about to violate any provision of this chapter... the Division may bring an action in the district court...." In this case, NRED claims it has reasonable cause to belief Defendants are about to violate NRS 116.3116. It may, therefore, bring an action in the district court. NRS 116.795's grant of litigation rights to NRED is not contingent upon any act of the CCICCH. Such a condition precedent (as the finding of a violation against a person by the CCICCH) simply does not exist in the statute. If such a condition precedent was the objective of the legislature, it would have simply written it into NRS 116.795.

Regardless, the Nevada Legislature does not have the authority to divest the District Court of jurisdiction of any kind. Unlike the United States Constitution which authorizes Congress to determine the jurisdiction of the federal district courts (Art. III, Sec. 1 "The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish.")[4] the jurisdiction of Nevada District Court is created not by the legislature, but by the Nevada Constitution.[5] Nevada's legislative branch of government is only

[4] Such courts are known as "Article III" courts. These courts get their name from the fact that they derive their power from Article III of the Constitution. These courts include (1) the U.S. District Courts, (2) the U.S. Circuit Courts of Appeal, and (3) the U.S. Supreme Court. They also include two special courts: (a) the U.S. Court of Claims and (b) the U.S. Court of International Trade.

[5] Indeed, this is a primary distinction between the United States Constitution and the constitutions of many states. See for example, see Article 6, Section 10 of the California Constitution: " SEC. 10. The Supreme Court, courts of appeal, superior courts, and their judges have original jurisdiction in habeas corpus proceedings. Those courts also have original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition. The appellate division

empowered to determine the jurisdiction of the justice courts and family courts. All jurisdiction not granted to the justice courts is constitutionally imbued in the District Court. In short, the District Court has original jurisdiction over all matters not otherwise granted to the Justice Court and the legislature may not pass laws otherwise divesting the District Court of subject matter jurisdiction:

> Art. 6 Sec. 6. District Courts: Jurisdiction; referees; family court.
>
> 1. **The District Courts in the several Judicial Districts of this State have original jurisdiction in all cases excluded by law from the original jurisdiction of justices' courts....**
>
> 2. The legislature may provide by law for:
>
> (a) Referees in district courts.
>
> (b) The establishment of a family court as a division of any district court and may prescribe its jurisdiction.

Other than laws defining the original jurisdiction of the justice courts or the jurisdiction of the family courts, there can be no law passed by the Nevada legislature (which is constitutional) which alters the original jurisdiction of the District Court. As the Nevada Supreme Court has noted, "In Nevada, judicial power is derived directly from Article 6, Section 6(1) of the Nevada Constitution, empowering judges with the authority to act and determine justiciable controversies." *Landreth v. Malik*, 251 P.3d 163, 168 (Nev. 2011). "Inherent powers are derived from two sources: the separation of powers doctrine and the judiciary's sheer existence by virtue of the judicial functions expressly created under Nevada's Constitution." *Halverson v. Hardcastle*, 123 Nev. 245, 259, 163 P.3d 428, 438 (2007).

However, this Court presumes statutes are constitutional. *Seres v. Lerner*, 120 Nev. 928, 931, 102 P.3d 91, 93 (2004); *Martinez v. Maruszczak*, 123 Nev. 433, 168 P.3d 720 (2007). Thus, if this Court is to presume NRS 116.750 is constitutional, it can decide that the CCICCH has

---

of the superior court has original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition directed to the superior court in causes subject to its appellate jurisdiction. **Superior courts have original jurisdiction in all other causes.**"

jurisdiction to determine violations of NRS 116, but so too does this Court have the jurisdiction to issue a declaratory ruling on NRS 116 and issue appropriate injunctive relief. Because NRS 116.750 does not grant "exclusive" jurisdiction to the CCICCH to determine violations of NRS 116, and because if it did, such a statute would violate Article 6, Section 6 of the Nevada Constitution, this Court can simply rule both CCICCH and the District Courts have concurrent jurisdiction to determine violations of NRS 116.3116.

8. DEFENDANTS' CREATIVE "DISAGREEMENT OVER THE MEANING OF A LAW" ARGUMENT IS NONSENSICAL. MISTAKE OF LAW IN NO DEFENSE TO THE VIOLATION OF A STATUTE

Despite at least 8 District Courts[6] declaring that there is a cap on the super priority lien, Defendants argue that there is a disagreement over the meaning of NRS 116.3116, and therefore, it is impossible for Defendants to have violated it. They write, "However, disagreeing over the meaning of a law does not constitute a "violation" of law." (NAS' Motion for Summary Judgment at 4:7-8). It's a bit like arguing that when a murderer and the State of Nevada disagree over the definition of homicide, a homicide could not have been committed even though the victim lay dead with a bullet in his brain. Doubtless the district court would care little about the semantic dispute. Either a law has been violated or it hasn't. Either the Debt Collectors demanded more for the super priority lien than a figure equaling 9 months of assessments or they haven't. The fact that they don't agree with what the statute clearly mandates is irrelevant. If no person could violate a statute over which he disagreed with its meaning, anarchy would ensue in this nation of laws.

Defendants cites several cases (including an unpublished one) which absolutely do not stand for the proposition that if the offending party disagrees over the interpretation of a statute, that the statute cannot be violated. Defendants first cited case of *Hale v. Touro Infirmary, 2004-0003* (La. App. 4 Cir. 11/3/04), 886 So. 2d 1210, 1215 writ denied, 2005-0103 (La. 3/24/05), 896 So. 2d 1036, actually stands for the proposition in support of Plaintiffs' case. The *Hale* court held that where there

[6] Judge Denton (Case No. A647850,) Judge Gonzalez (Case No. A636948,) Judge Scann (Case No. A651107,) Judge Allf (Case No. A666569,) Judge Barker (Case No. A663304,) Judge Silver (Case No. 658044,) Judge Sturman (Case No. A680828,) Judge Berry (Case No. CV12-02254).

is a violation of the law and a remedy is provided by statute, an action is properly brought before the court.

> We turn, therefore, to the principles of statutory construction and interpretation. Article 9 of the Louisiana Civil Code advises: When a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature. Thus, what is clear is that we are bound by the language of La. R.S. 23:967, which provides that an employer may not retaliate against an employee who has notified it of a workplace practice in violation of law and who either refuses to participate in the practice or who threatens to publicize the practice. Although there are strong public policy arguments supporting Hale's interpretation of the statute, we conclude that the very specific language referring to a "violation of law" placed not once, but in several places throughout the statute, manifests a desire by the Louisiana legislature to only provide a remedy to employees of private employers whose practices are in actual violation of law, and not simply practices disagreed with or found distasteful by the employee. On its face, the Whistleblower Statute supports actions by plaintiffs who are aware of a workplace practice or act in which a violation of law actually occurred.
>
> *Hale v. Touro Infirmary, 2004-0003* (La. App. 4 Cir. 11/3/04), 886 So. 2d 1210, 1215 writ denied, 2005-0103 (La. 3/24/05), 896 So. 2d 1036

The *Hale* court clearly held that where a statute is being violated, and where the statute provides for a remedy, an action may be brought by the party aggrieved by the violation. This Court is, "... bound by the language of...." the statute.

Defendants also cite *Hawkins v. Agric. Mktg. Serv., Dep't of Agric.*, U.S., 10 F.3d 1125, 1131-32 (5th Cir. 1993) for the proposition that a disagreement over a law means such a law cannot be violated. However, the *Hawkins* court held the exact opposite:

> The basis of Hawkins' equal protection claim is that the presiding officer's and this court's rejection of the "rebuttable presumption" approach in interpreting § 499a(b)(9), an approach which was taken by the District of Columbia Circuit, in favor of the per se rule which we see as commanded by the plain language of the statute, violates his right to equal protection under the law. Thus, Hawkins suggests that a difference of opinion among the circuits or a circuit split violates such a right. Although we find Hawkins' argument a novel one, we disagree. A disagreement between circuits on the interpretation of a statute is a matter which either the Supreme Court or Congress should resolve; it does not violate the equal protection rights of the person subjected to the "more burdensome

> interpretation." United States v. Palacio, 4 F.3d 150, 154 (2d Cir.1993). We thus find Hawkins' equal protection argument to be without merit. Hawkins v. Agric. Mktg. Serv., Dep't of Agric., U.S., 10 F.3d 1125, 1131-32 (5th Cir. 1993)

Courts uniformly rule that where a mistake of law occurs by a party, such a mistake is absolutely no defense to prosecution. For example:

> A mistake of fact occurs when a person understands the facts to be other than what they actually are, whereas a mistake of law occurs when a person knows the true facts but is mistaken as to their legal consequences... a mistake of law is no defense to a general intent crime (ignorance of the law being no excuse).... P*eople v. Robison*, A117923, 2008 WL 4726532 (Cal. Ct. App. Oct. 29, 2008)
>
> * * *
>
> It is immaterial that defendant supposedly believed it legal to refer insureds to lawyers and doctors. Defendant's belief is a classic mistake of law that provides no defense: "ignorance of a law is not a defense to a charge of its violation." (Hale v. Morgan, supra, 22 Cal.3d at p. 396, 149 Cal.Rptr. 375, 584 P.2d 512.) *People v. Meneses*, 165 Cal. App. 4th 1648, 1663-64, 82 Cal. Rptr. 3d 100, 113 (2008)
>
> * * *
>
> "The general rule that ignorance of the law or a mistake of law is no defense to criminal prosecution is deeply rooted in the American legal system." *Cheek v. United States*, 111 S.Ct. 604, 609 (1991)
>
> * * *
>
> "Of course, should Yellin have refused to answer in the mistaken but good-faith belief that his rights had been violated, his mistake of law would be no defense." *Yellin v. United States*, 374 U.S. 109, 123, 83 S. Ct. 1828, 1837, 10 L. Ed. 2d 778 (1963)
>
> * * *
>
> "To the extent that appellants erroneously believe they were given amnesty, their mistake of law is no defense." See United States v. Ness, 652 F.2d 890, 893 (9th Cir.) (per curiam), cert. denied, 454 U.S. 1126, 102 S.Ct. 976, 71 L.Ed.2d 113 (1981). *United States v. Taylor*, 693 F.2d 919, 924 (9th Cir. 1982)

Mistake of law is no defense to the violation of a statute. Indeed, the only disagreement over the super priority lien statute comes from Defendants who have made tens of millions of dollars from

routinely violating NRS 116.3116. However, there is no disagreement on the bench that NRS 116.3116 caps the super priority lien to a figure equaling 9 months of assessments. Defendants cited decisions of Judge Williams and Judge Vega and the Hudson House case do not hold differently and are soundly distinguishable and inapplicable to this case.

9. DEFENDANTS' CITED CASES OF ELKHORN, JP MORTGAGE AND HUDSON HOUSE ARE MISPLACED AND COMPLETELY MISINTERPRETED IN DEFENDANTS' BRIEFS

NRS 116.3116(2) clearly states that a Super Priority Lien only exists "to the extent of" a figure equaling 9 months of assessments based upon an association's periodic budget. However, in the case where an association files a lawsuit to collect its unpaid assessments, or in the case where a judicial (versus non-judicial) foreclosure occurs, NRS 116.3116(7) provides as follows, "A judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party." In the *Elkhorn* and *JP Morgan* cases cited by Defendants, there were lawsuits filed. Both courts, therefore, had a statutory foundation for granting fees and costs in addition to the limited super priority lien.

In the *Elkhorn* case (A607051), Judge Vega answered two declaratory relief questions:

1. "Does the Association have the right to bring a judicial foreclosure action before a court of proper jurisdiction in Nevada to satisfy the Association's special priority portion of a lien for assessments authorised by NRS 116.3116 ("SPL")?" and
2. "If the Association has the right to bring a judicial foreclosure action to satisfy is SPL in Nevada, are the non-attorney fees and costs of collection accrued by the Association to bring the judicial foreclosure action considered a component part of the Association's SPL?" (*See Ex. 8*).

Judge Vega answered both questions in the affirmative. This was the correct ruling because NRS 116.3116(7) provides that in the case where a lawsuit is filed and a judgment obtained, fees and costs must be awarded. Such was the case in *Elkhorn*. Such is not the case here. 99.9% of the time the homeowners' associations do not file judicial foreclosure actions nor do they sue the homeowner. Instead, they choose to non-judicially foreclose on the homeowner. Therefore, since no judgment

or decree issues, NRS 116.3116(7) does not come into play and costs and fees cannot be obtained in excess of the Super Priority Lien cap of 9 times an association's monthly assessment.

In the *JP Morgan Chase* case cited by Baker Place (A562687), it must first be noted that the Order and Judgment repeatedly states that a collection agency (Nevada Association Services ("NAS")) had a lien over the subject property. Indeed, the Court made a variety of rulings based upon NAS' alleged "lien". However, no statute in the State of Nevada grants a collection agency a lien over an individual's property. NRS 116.3116 grants only to a homeowners' association a statutory lien, not to a collection agency. Thus, the ruling in *JP Morgan* should be immediately discounted because the Court failed to understand that collection agencies do not have "super priority" liens, only homeowners' associations do. Further, like the *Elkhorn* case, in the *JP Morgan* case a lawsuit was filed and judgment obtained. Due to a lawsuit having been filed and a judgment obtained, the Court utilized the *Brunzell* factors in awarding fees and costs to NAS. The Court noted:

> NAS's documented attorney's fees in the amount of $47,700.00 meet the Brunzell v Golden Gate National Bank, 85 Nev. 345, 349 (1969) factors. That based on the qualities of the advocate, the character of the work to be done, the work actually performed by the lawyer, and the result obtained, the amount of attorney's fees and costs to be included as part of NAS' collection costs relating to its "super priority" lien amount are reasonable and necessary. (*See Ex. 9*).

Further, as in the *Elkhorn* case, because a judgment was rendered, the Court utilized NRS 116.3116(7) in awarding fees and costs. For example, the Court ruled:

> The Court further found that NAS properly supported its claim for $49,035.28 in attorney's fees and costs through August 27, 2010 comprised of $1,635.28 in costs and $47,400.00 in attorney's fees in defending and protecting its statutory right to an assessment lien, pursuant to NRS 116.3116(7).

Again, because NRS 116.3116(7) provides that in the case where a lawsuit is filed and a judgment obtained, fees and costs must be awarded, the *JP Morgan* case and the *Elkhorn* case are misplaced in the analysis before this Court. As no judgments or decrees are issued during a non-judicial foreclosure, NRS 116.3116(7) does not come into play and costs and fees cannot be obtained

in excess of the Super Priority Lien cap of 9 times an association's monthly assessment.

Further, as its sole, published, common law precedent for the proposition that the super priority portion of an association's lien can consist of both 9 months of assessments plus collection costs, Baker Place cites *Hudson House Condominium Association v. Brooks, 223 Conn. 610, 611 A.2d 862 (1992).* A case decided prior to Connecticut's unique statutory amendment to the UCIOA allowing for attorney's fees in addition to the 6 month assessment figure, Baker Place claims that the Supreme Court of Connecticut ruled that attorneys' fees must be included in the Super Priority Lien Amount in addition to, not capped by, the applicable period of common expense assessments.

However, Defendants fail to understand that the sole reason why that one, single case allowed 6 months of assessments plus attorney's fees is not because attorney's fees are allowed to be added as a matter of course pursuant to the super priority language of the statute, but only because the homeowner's association (Hudson House Condominium Association) in that particular case obtained a judgment against the homeowner. Thus, just as in the Judge Williams and Judge Vega cases cited above, there was a statutory foundation for the award.

The Connecticut Supreme Court held that pursuant to another provision of Connecticut law (Section 47-258(g)), when as association obtains a judgment, only then can an association obtain both 6 months of assessment plus fees and costs. Nowhere did the Connecticut Court hold that an association can obtain both collection costs and 6 months of assessments as a matter of course, without first obtaining a judgment. In fact, in applying the original UCIOA that Nevada adopted, no Supreme Court or Appellate Court anywhere has ever so held. The Connecticut Court specifically determined that:

> Section 47-258(g) provides that a "judgment or decree in any action brought under this section shall include costs and reasonable attorney's fees for the prevailing party." It is undisputed that HHCA, as the plaintiff and the party in whose favor the trial court rendered judgment, is the prevailing party in this, its own foreclosure action. CHFA does not dispute that § 47-258(g) authorizes the inclusion of these costs and fees as part of HHCA's judgment.... *Hudson House Condo. Ass'n, Inc. v. Brooks, 223 Conn. 610, 616, 611 A.2d 862, 866 (1992)*

Thus, Section 47-258(g) specifically states, "A judgment or decree in any action brought under this section shall include costs and reasonable attorney's fees for the prevailing party." *Conn. Gen. Stat. Ann. § 47-258 (West)*. In fact, Nevada has enacted the very same law in NRS 116.3116(7) which states, "A judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party." There is simply no question that if an association obtains a judgment against the lender and the lender retakes the property through foreclosure, like in the *Hudson House* case, then attorney's fees and costs may be added to the 6 month assessment figure as against the foreclosing lender. Indeed, there is a specific statute that allows for it.

10. FANNIE MAE AND FREDDIE MAC'S OFFICIAL POSITION IS THAT THE SUPER PRIORITY LIEN IS CAPPED

The Housing and Economic Recovery Act of 2008, enacted July 30, 2008, provided the authority for the United States government's takeover of Fannie Mae and Freddie Mac. The act created a new regulator, the Federal Housing Finance Agency ("FHFA"), with the authority to take control of either Fannie Mae and Freddie Mac to restore them to sound financial conditions. Fannie Mae and Freddie Mac have been under FHFA conservatorship since September 6, 2008. As conservator, FHFA succeeded to all rights, titles, powers and privileges of Fannie Mae and Freddie Mac and of any shareholder, officer or director of the Fannie Mae and Freddie Mac with respect to the Fannie Mae and Freddie Mac and their assets.

Contrary to Defendant's argument that Fannie Mae or Freddie Mac approve an unlimited amount of collection costs on top of the Super Priority Lien, the lead General Counsel for the Federal Housing Finance Agency has specifically stated to Lucas Foletta, counsel for Governor Sandoval, that Fannie Mae and Freddie Mac do not believe collection costs can be added on top of the Super Priority Lien. Alfred M. Pollard, General Counsel to the FHFA wrote to the Governor's Office:

> I would note Fannie Mae and Freddie Mac have provided for reimbursement of six months of regular common expense unpaid assessments. They do not reimburse for collection costs or attorney's fees. *(Ex. 10, Letter from Alfred Pollard to Lucas Folleta).*

Therefore, contrary to Defendant's argument that Fannie Mae and Freddie Mac believe

collection costs can be added on top of the Super Priority Lien, Freddie Mac, Fannie Mae and the FHFA hold no such position. Indeed, the U.S. Government's position is just the opposite.

11. THIS ACTION IS NOT BARRED BY NRS 38.310

NRS 38.310 states in pertinent part:

> 1. No civil action based upon a claim relating to:
>
> (a) The interpretation, application or enforcement of any covenants, conditions or restrictions applicable to residential property or any bylaws, rules or regulations adopted by an association... may be commenced in any court in this State unless the action has been submitted to mediation or arbitration pursuant to the provisions of NRS 38.300 to 38.360, inclusive.... NRS 38.310

NRS 38.310 is inapplicable for two reasons. The first is that this action requests that the Court determine the meaning of a statute, not of any covenants, conditions or restrictions. For example:

> 61. Plaintiffs are entitled to a declaratory judgment determining the proper interpretation of NRS 116.3116, pursuant to NRS 30.040.
>
> 62. Declaratory relief is necessary to declare whether an association, or its collection agency, may include "costs of collecting" as part of an association's lien.
>
> 63. Declaratory relief is necessary to declare whether Defendants - as collection agencies for associations - may include more than 9 times the monthly assessment for common expenses, based on the periodic budget, (plus Abatement Costs) as part of the associations' super priority lien.

In determining whether "costs of collection" can be included in the statutory lien, the Court will look to NRS 116.3116, not the CC&RS. Moreover, as this Court has already ruled in the Prem Deferred Trust v. Aliante case and the Prem Deferred Trust v. Southern Highlands case, under NRS 116.3116(2), determining the amount of the super priority lien does not require the application, enforcement or interpretation of CC&RS. One may determine the monthly assessment figure by a simple review of the periodic budget which is required by NRS 116.3115. Lastly, the claims contained in the Complaint on file are grounded on upon Plaintiff's claim for Declaratory Relief, i.e., a legal issue (the meaning of NRS 116.3116). Notably, regarding the exhaustion of administrative

remedies, the Supreme Court has ruled, "The exhaustion doctrine will not deprive the court of jurisdiction "where the issues relate solely to the interpretation or constitutionality of a statute." *State of Nevada v. Glusman*, 98 Nev. 412, 419, 651 P.2d 639, 644 (1982), appeal dism'd, 459 U.S. 1192, 103 S.Ct. 1170, 75 L.Ed.2d 423 (1983).

The second reason why NRS 38.310 is inapplicable is because the State is requesting injunctive relief. NRS 38.300 defines "civil action" in the following manner:

> "Civil action" includes an action for money damages or equitable relief. The term does not include an action in equity for injunctive relief in which there is an immediate threat of irreparable harm, or an action relating to the title to residential property. NRS 38.300.

Therefore, injunctive relief is an exception to the mandatory mediation requirements. NRS 116.795 clearly give the State the right to seek injunctive relief from the district court "to restrain or enjoin that person from engaging in or continuing to commit the violations" of NRS 116. Further, in the case where parties are violating a statute, the courts (including the United States Supreme Court) have concluded that irreparable harm is not a required element and have fashioned a different test for determining when injunctive relief is warranted.

Because Defendants have been violating NRS 116, no showing of irreparable harm or balancing the hardship of the parties is legally necessary as it is presumed. For example:

> ... it must be observed that the violation of a statute ordinarily presumes irreparable harm. *Fleet Nat. Bank v. Burke* 45 Conn.Supp. 566, 578, 727 A.2d 823, 829 (Conn.Super.,1998)
>
> * * *
>
> It is a well-established rule that where Congress expressly provides for injunctive relief to prevent violations of a statute, a plaintiff does not need to demonstrate irreparable harm to secure an injunction. In such situations, it is not the role of the courts to balance the equities between the parties. The controlling issue is whether Congress has already balanced the equities and has determined that, as a matter of public policy, an injunction should issue where the defendant is engaged in, or is about to engage in, any activity which the statute prohibits. *National Wildlife Federation v. Harvey* 440 F.Supp.2d 940, 955 (E.D.Ark.,2006)
>
> * * *

> Where the conduct sought to be enjoined is clearly in violation of a statute, courts have adopted a more relaxed standard that relieves a party moving for preliminary injunctive relief from demonstrating two of these elements. Under this "per se" rule, the moving party need not demonstrate irreparable harm or that the balance of hardships is in his favor. *Sadler v. State ex rel. Sanders* 811 N.E.2d 936, 946 (Ind.App.,2004)
>
> * * *
>
> ... where injunctive relief is sought to prevent the violation of a statute, the jurisprudential rule is that no showing of irreparable harm is necessary. *Historic Restoration, Inc. v. RSUI Indem. Co.* 955 So.2d 200, 212-213, 2006-1178 (La.App. 4 Cir. 3/21/07),), (La.App. 4 Cir.,2007)
>
> * * *
>
> A petitioner is entitled to injunctive relief without the requisite showing of irreparable injury when the conduct sought to be restrained is unconstitutional or unlawful, i.e., when the conduct sought to be enjoined constitutes a direct violation of a prohibitory law and/or a violation of a constitutional right. South Cent. Bell Tel. Co. v. Louisiana Pub. Serv. Comm'n, 555 So.2d 1370 (La.1990). Once a plaintiff has made a prima facie showing that the conduct to be enjoined is reprobated by law, the petitioner is entitled to injunctive relief without the necessity of showing that no other adequate legal remedy exists. Jurisich v. Jenkins 749 So.2d 597, 599, 1999-0076 (La.,1999)

Therefore, because this case is about the interpretation of a statute, and because irreparable harm is presumed due to the violation of a statute, this Court has no obligation to dismiss this case.

CONCLUSION

For the foregoing reasons, the proposed friends of the court request leave to file this Amicus Curiae Brief.

DATED this 15th day of December, 2013.

ADAMS LAW GROUP, LTD.

JAMES R. ADAMS, ESQ.
Nevada Bar No. 6874

8010 W. Sahara Ave, Suite 260
Las Vegas, Nevada 89117
Tel: 702-838-7200
Fax: 702-838-3636
james@adamslawnevada.com

PUOY K. PREMSRIRUT, ESQ., INC.
Puoy K. Premsrirut, Esq.
Nevada Bar No. 7141
520 S. Fourth Street, 2nd Floor
Las Vegas, NV 89101
(702) 384-5563
(702)-385-1752 Fax
ppremsrirut@brownlawlv.com
Attorneys for amicus curiae

Ex. 1

ADAMS LAW GROUP, LTD.
JAMES R. ADAMS, ESQ.
Nevada Bar No. 6874
ASSLY SAYYAR, ESQ.
Nevada Bar No. 9178
8681 W. Sahara Ave., Suite 280
Las Vegas, Nevada 89117
Tel: 702-838-7200
Fax: 702-838-3636
james@adamslawnevada.com
assly@adamslawnevada.com
Attorney for Petitioners

STATE OF NEVADA

DEPARTMENT OF BUSINESS AND INDUSTRY

IN THE MATTER of the Petition of Prem Investments, LLC., a Nevada limited liability company, Rutt Premsrirut, Manager, for an application for Advisory Opinion and Declaratory Order pursuant to NAC §232.040 Petition for declaratory order or advisory opinion	Docket No.

COMES NOW, Petitioner Prem Investments, LLC., a Nevada limited liability company, Rutt Premsrirut, Manager ("Petitioner" or "Prem Investments") and hereby applies by Petition to the Nevada Department of Business and Industry for an Advisory Opinion and Declaratory Order concerning the applicability of a statute. This application for Petition for Advisory Opinion and Declaratory Order is made pursuant to NAC §232.040, Petition for declaratory order or advisory opinion; Authorization; filing; contents. This Petition is made to the Director of the Nevada Department of Business and Industry pursuant to NAC §232.040(2)(b). In support of this Petition, Prem Investments, by and through its counsel, states as follows:

I

PETITIONER

Prem Investments is not a party in any administrative, civil or criminal action concerning the matters contained in this Petition. Prem Investments is in the business of purchasing single family residences ("Real Property") through foreclosure auctions held by the first mortgage lender of said Real Property. Prem Investments has been the recipient of demands by Nevada collection agencies

licensed under NRS §649 and purporting to represent Nevada common interest communities ("homeowners' associations") in the collection of homeowners' associations' liens placed upon the Real Property. Said liens comprise debts which were incurred by the prior owner of the Real Property but which have been extinguished pursuant to NRS §116.3116 by the first mortgage lender's foreclosure auction. Regardless that the liens have been legally extinguished and the debt is not owed by Petitioner, Nevada collection agencies are demanding and collecting said lien amounts from Petitioner and refusing to clear title of the Real Property unless payment is made.

All correspondence can be mailed to Prem Investments at: 520 S. Fourth Street, Second Floor, Las Vegas, NV 89101, with copy to Adams Law Group, Ltd., at 8681 W. Sahara Ave., Suite 280, Las Vegas, NV 89117.

II.

THE FACTS

Homeowners' associations and their collection agents are enforcing and collecting extinguished association liens and instituting wrongful foreclosure proceedings against the Real Property of Petitioner, and other owners of real property including lenders, government mortgage insurers and investors who take title to single family residences through foreclosure auctions. In Nevada, pursuant to NRS §116.3116, once a first mortgage lender forecloses on a unit located within a homeowners' association, an association's lien is extinguished but for a limited and finite portion of the lien called the "super priority lien amount." However, the practice of homeowners' associations and their collection agents is to regularly violate Nevada law and charge to the new owner (who acquires title at the auction) the entire lien amount, not just the limited, super priority lien amount.

The scheme, which has purported to net Nevada homeowners' associations and collection agencies tens of millions of dollars over the last few years, generally unfolds as follows:

- A homeowner, owning property within an association, becomes delinquent in the payment of his mortgage. Simultaneously, the homeowner stops paying his association assessments.

- The association assesses fines, late fees, and penalties against the homeowner and, most notably, employs a collection agency to collect the past due amounts. Even though the association assessments are often less than $100 per month, the associations and collection agencies add thousands of dollars of "collection" fees onto the homeowner's bill.

- Knowing that these fees constitute a statutory lien on the homeowner's property, the associations and collection agencies are secure in knowing that their many thousands of dollars in "collection" fees will get paid, or else the homeowner's title will remain clouded.

- Then, due to the homeowner's inability to pay his mortgage, the homeowner's lender ultimately forecloses on the property. At the foreclosure auction, the lender, lenders' mortgage insurer or an investor will take title to the property.

- Once this happens, under Nevada law, the association's lien is extinguished by the foreclosure auction, but for the limited, "super priority lien amount" which equals a maximum of 9 times the association's monthly assessments.

- However, instead of informing the new owner that the association's lien has been extinguished but for the super priority lien amount, the associations through their collection agencies represent that they have the legal right to collect from the new owner <u>all monies</u> owed by the original homeowner, including the thousands of dollars of "collection" fees added onto the original homeowner's bill.

- Knowing that title is clouded by the maintaining of the lien and also knowing that the new owner cannot sell the property without clear title, the associations and collection agencies demand vastly more amounts of money than Nevada law requires the new owner to pay.

- Ultimately, in order to clear title and to prevent the association from foreclosing its unlawful lien amount, the new owner pays the improperly demanded amounts and gets the dubious distinction of having paid to Nevada collection agencies thousands of dollars which he did not owe.

This alleged scheme is purported to have been conducted thousands of times resulting in the overpayment by lenders, government mortgage insurers and investors of tens of millions of dollars.

III.

THE ISSUES

The reason for requesting this order and opinion is to determine whether the foreclosure by a first mortgage lender on a property located within a Nevada common interest community extinguishes an existing homeowners' association lien against said property. More particularly, the issues upon which the advisory opinion and declaratory order are sought are the following:

1. Under NRS §116.3116, a homeowners' association has a lien on a unit for any assessment levied against that unit or any fines imposed against the unit's owner from the time the assessment or fine becomes due. Pursuant to NRS §116.3116, what portion of the lien, if any, is superior to the unit's first mortgage lender's security interest ("super priority lien") and may the sum total of the super priority lien amount, whether it be comprised of assessments, fees, costs of collection, or other charges, ever exceed 9 times the monthly assessment amount for common expenses based on the periodic budget adopted by the association pursuant to NRS §116.3115, plus any charges incurred by the association on a unit pursuant to NRS §116.310312 (unit repair expenses)?
2. Pursuant to NRS §116.3116, does a "super priority lien" exist in the absence of a homeowners' association's failure to file a complaint with a court to enforce the lien, i.e., the failure to institute a "civil action" as defined by Nevada Rules of Civil Procedure 2 and 3?

IV.

RELEVANT LAW AND HISTORY

A. Introduction of the Uniform Common Interest Ownership Act

The Uniform Common Interest Ownership Act ("UCIOA") was originally promulgated in 1982 by the National Conference of Commissioners on Uniform State Laws ("Uniform Law

Commissioners" or "ULC"). In 1991, Nevada passed the UCIOA which is embodied in Nevada Revised Statutes §116. As of October 31, 2009, there were 2,961 registered Nevada common interest communities ("homeowners' associations") subject to NRS §116 having a total of 472,777 units within them.[1] UCIOA is a comprehensive act that governs the formation, management, and termination of a common interest community, whether that community is a condominium, planned community, or real estate cooperative. It also provides for disclosure of important facts about common interest property at sale to a buyer, including resale disclosure for any sale after the initial sale by the developer of the property; for warranties of sale; for a buyer's recision rights in a sale contract; and for escrow of deposits made to secure a sale contract. Importantly, it also governs the creation, treatment, foreclosure and extinguishment of homeowners' associations' liens on units within their communities.

B. The Legislative History & the Super Priority Lien

The UCIOA governs liens against properties located within homeowners' associations and, regarding association liens against units, generally states as follows:

a. Homeowners associations have a statutory lien on any unit of real property located within their associations for any assessment imposed against a unit or fine imposed against the unit's owner from the time the assessment or fine becomes due;

b. However, the associations' liens are junior to the first security interest of the unit's first mortgage lender except for a certain, limited and specified portion of the lien as defined in §3-116 which remains senior to the first security interest of the unit's first mortgage lender, provided that the associations had instituted an "action" to enforce their liens (the "Super Priority Lien Amount").

[1] Executive Summary of the Ombudsman, Reporting Period: July 1, 2009 through October 31, 2009

Thus, in a break with traditional lien priority law, the UCIOA granted the association a lien priority over first mortgages recorded before any assessment delinquency. However, as shall be noted below, the associations' lien priority is only available to a certain and limited extent.

The original language of the 1982 UCIOA regarding §3-116 and super priority liens is as follows:

> (a) The association has a lien on a unit for any assessment levied against that unit or fines imposed against its unit owner from the time the assessment or fine becomes due. Unless the declaration otherwise provides, fees, charges, late charges, fines, and interest charged pursuant to Section 3-102(a)(10), (11), and (12) are enforceable as assessments under this section. If an assessment is payable in instalments, the full amount of the assessment is a lien from the time the first instalment thereof becomes due.
>
> (b) A lien under this section is prior to all other liens and encumbrances on a unit except (i) liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes, or takes subject to, (ii) a first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent, or, in a cooperative, the first security interest encumbering only the unit owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent, and
>
> (iii) liens for real estate taxes and other governmental assessments or charges against the unit or cooperative. The lien is also prior to all security interests described in clause (ii) above to the extent of the common expense assessments based on the periodic budget adopted by the association pursuant to Section 3-115(a) which would have become due in the absence of acceleration during the 6 months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association. [The lien under this section is not subject to the provisions of [insert appropriate reference to state homestead, dower and curtesy, or other exemptions]. *(See Exhibit "1")*

Thus, the "super priority" portion of the homeowners' associations' liens were capped "to the extent of the common expense assessments based on the periodic budget adopted by the association pursuant to section 3-115(a) which would have become due in the absence of acceleration during the six months immediately preceding an action to enforce the lien." While an underlying association lien may have been for a higher amount, the only amount which could achieve "super priority" status over the first mortgage lender was an amount equaling 6 times the monthly assessments.

Interestingly, the Super Priority Lien Amount was intended to be a fixed amount, i.e., one that a lender could approximate prior to lending funds to a borrower who was purchasing within a common interest community. This was so that the lender could escrow, from the borrower funds, the predetermined Super Priority Lien Amount in case the borrower failed to pay the assessments. As noted in the comments section of the 1994 draft of the UCIOA:

> To ensure prompt and efficient enforcement of the association's lien for unpaid assessments, such liens should enjoy statutory priority over most other liens. Accordingly, subsection (b) provides that the association's lien takes priority over all other liens and encumbrances except those recorded prior to the recordation of the declaration, those imposed for real estate taxes or other governmental assessments or charges against the unit, and first security interests recorded before the date the assessment became delinquent. However, as to prior first security interests the association's lien does have priority for six months' assessments based on the periodic budget. A significant departure from existing practice, the six months' priority for the assessment lien strikes an equitable balance between the need to enforce collection of unpaid assessments and the obvious necessity for protecting the priority of the security interests of lenders. As a practical matter, secured lenders will most likely pay the six months' assessments demanded by the association rather than having the association foreclose on the unit. **If the lender wishes, an escrow for assessments can be required.** *(See Exhibit "2," Comments, UCIOA 1994, page 159-160.)*

Thus, since the lender would know what the assessments were prior to lending, and since the lender would know, pursuant to §3-116 of the UCIOA, that the Super Priority Lien Amount was limited to 6 months of assessments, it could require the borrower to escrow, prior to closing, exactly that amount of funds for which the lender might be liable, i.e., the Super Priority Lien Amount. The lender, therefore, had protection if it had to pay the Super Priority Lien Amount, and the association was assured of payment of a maximum figure equal to 6 months of assessments if the borrower/homeowner defaulted on his obligations to his association. Thus, the "equitable balance between the need to enforce collection of unpaid assessments and the obvious necessity for protecting the priority of the security interests of lenders" was accomplished.

C. Nevada Revised Statutes §116.3116

In 1991, Nevada adopted the 1982 version of the UCIOA. The provisions relating to homeowners' association liens were embodied in NRS §116.3116. On October 1, 2009, NRS §116.3116 was amended by the Nevada legislature in two important ways. First, it increased the

Super Priority Lien Amount to a figure equaling 9 times (formerly 6 times) the monthly assessment amount for common expenses based on the periodic budget adopted by the association pursuant to NRS §116.3115 (see Nevada Assembly Bill 204). In calculating the Super Priority Lien Amount, it also allowed to be added any charges incurred by the association on a unit pursuant to NRS §116.310312 (repair expenses of a unit) (see Nevada Assembly Bill 361). The most recent adoption of NRS §116.3116 states in pertinent part:

> 1. The association has a lien on a unit for any construction penalty that is imposed against the unit's owner pursuant to NRS 116.310305, any assessment levied against that unit or any fines imposed against the unit's owner from the time the construction penalty, assessment or fine becomes due.
>
> (2) A lien under this section is prior to all other liens and encumbrances on a unit **except**:
>
> (b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent or, in a cooperative, the first security interest encumbering only the unit's owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent;
>
> The lien is also prior to all security interests described in paragraph (b) to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien, unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien.

The figure equaling 9 times the association's monthly assessment amount has been dubbed the "Super Priority Lien Amount" because it is that figure which remains senior or superior to the first security interest holder's trust deed. It is only the Super Priority Lien Amount, not all association lien amounts, which is super to the first mortgage holder's trust deed. Any amounts greater than the Super Priority Lien Amount still remain a lien against the owner's unit, but it is a lien which is junior to the first security interest holder. The "junior" portion of the lien, therefore, is extinguished by a foreclosing first mortgage lender and the "super priority" portion of the lien survives extinguishment by the foreclosing first mortgage lender.

D. Necessity for the Institution of an Action

As a condition precedent to the establishment of a super priority lien, homeowners' associations need to file "an action to enforce the lien...." Nevada and Massachusetts have nearly identical language in their homeowners' association super priority lien statutes regarding the necessity for the institution of an action to enforce the lien:

NRS 116.3116	**MA ST 183A s 6**
The lien is also prior to all security interests described in paragraph (b) to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien....	This lien is also prior to the mortgages described in clause (ii) above to the extent of the common expense assessments based on the budget adopted pursuant to subsection (a) above which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien....

Citing nearly identical language as that of the Nevada statute, the Massachusetts courts have held that the institution of a lawsuit (i.e., a civil action) is a condition precedent for homeowners' associations' achievement of super priority status for any portion of its lien amount. The Massachusetts courts have held:

> The condominium lien achieves "super priority" status over the first mortgage when a condominium association institutes "an action to enforce the lien." Thus, Section 6(c) provides that: [t]his lien is also prior to the mortgages described in clause (ii) above to the extent of the common expense assessments based on the budget adopted pursuant to subsection
>
> (a) above which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien...
>
> ***Accordingly, the institution of an action by a condominium association is a condition precedent to achieving "super-priority" status for the condominium lien. However, even when the association files such an action, the condominium lien is given a "super-priority" status only to the extent of unpaid condominium fees for the preceding six months.***
>
> ***It is uncontested by the parties that a lawsuit is required before a lien for unpaid condominium fees achieves a "super-priority"***

> ***status***. See also In re Stern, 44 B.R. 15, 19 (Bankr.D.Mass.1984). ("the establishment of the lien is not dependent on the commencement of a lawsuit, which is only a step necessary to elevate the status of the lien to a position superior to other encumbrances, other than municipal liens and first mortgages.")...
>
> In this regard, M.G.L. ch. 183A, § 6(c) specifically provides that, without the commencement of an enforcement action by a condominium association, a lien for unpaid condominium fees is "prior" to all other liens and encumbrances "except ... (ii) a first mortgage on the unit recorded before the date on which the assessment sought to be enforced became delinquent ..." (emphasis added). ***That exception makes the lien junior at least until an action is commenced. Indeed, if the lien was anything but junior to the first mortgage, there would be no reason to require that an action be filed in order to grant that lien super-priority status.*** *Trustees of MacIntosh Condominium Association v. F.D.I.C., et.al. 908 F.Supp. 58 at 63 (1995).*

Thus, as a "condition precedent" to elevate a portion of a homeowners' association's lien (in Nevada, an amount equaling 9 times the monthly assessments) from "junior" status to "super priority" status, a homeowners' association must file an "action" to enforce the lien. Nevada Rules of Civil Procedure 2 states, "There shall be one form of action to be known as 'civil action.'" Nevada Rules of Civil Procedure 3 states, "A civil action is commenced by filing a complaint with the court." Therefore, until a homeowners' association files a complaint with the court to enforce its lien, no amount of its lien can achieve "super priority" status. While the lien remains a lien on the owner's unit, it is in "junior" status to the first security holder's deed of trust. Thus, until the filing of a complaint with the court to enforce its lien, upon the first mortgage holder's foreclosure, the association's junior lien is extinguished in its entirety.

So in first addressing question 2 above, "Pursuant to NRS §116.3116, does a "super priority lien" exist in the absence of a homeowners' association's failure to file a complaint with a court to enforce the lien, i.e., the failure to institute a "civil action" as defined by Nevada Rules of Civil Procedure 2 and 3?" the answer must be no. Pursuant to NRS §116.3116, a homeowners' association's filing of a complaint with the court to enforce its lien is a condition precedent for any portion of its lien to achieve "super priority" status.

E. Collection Costs and the Super Priority Lien Amount Limit

Even if a homeowners' association does file a complaint with the court to enforce its lien, the lien is only given a "super-priority" status to the extent of a maximum amount equal to 9 times the monthly assessment amount adopted by the association in its last budget *(see NRS 116.3116(2), "The lien is also prior to all security interests described in paragraph (b) to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien.... ").* All other portions of the lien which exceed that limit are junior to the first mortgage lender *(see NRS 116.3116 (2)(b), "A lien under this section is prior to all other liens and encumbrances on a unit except... A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent.... ").*

It is important to note, however, that any association penalties, fees, charges, late charges, fines and interest are enforceable as assessments are enforceable *(see NRS 116.3116(1)), "... any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments under this section.... ").* In other words, penalties, late fees, and collection charges may be included within the Super Priority Lien Amount, as long as the total Super Priority Lien Amount does not exceed an amount which equals 9 times the association's monthly assessment amount (plus unit repair expenses under NRS 116.310312). Again, as the statute states, *"The lien is also prior to all security interests described in paragraph (b) to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien.... ") (NRS 116.3116(2).*

Indeed, it is critical to make clear that while assessments, late fees, charges, interest, and costs of collecting, etc., may all be included within the Super Priority Lien Amount, in no instance

may the sum total of the super priority portion of the lien exceed 9 times the monthly assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115, plus any charges incurred by the association on a unit pursuant to NRS 116.310312 (repair expenses). With the exception of the addition of repair expenses pursuant to NRS 116.310312, the Super Priority Lien Amount is a finite number which is not to be exceeded. It is a ceiling. It is a limit. It may, however, contain within it more than just assessments.

In 1991, both Nevada and Colorado adopted the UCIOA with language mirroring UCIOA Section 3-116 (1982 version). As noted by the Colorado Supreme Court, "The Colorado Common Interest Ownership Act was originally adopted in 1991, effective July 1, 1992. Ch. 283, sec. 1, §§ 38-33.3-101 to -319, 1991 Colo. Sess. Laws 1701-57. It was adopted, among other reasons, to provide stability to the finances of common interest communities by granting them a super-lien for unpaid assessments, and to provide uniformity and predictability to lenders in order to promote the availability of financing." *BA Mortg., LLC v. Quail Creek Condominium Ass'n, Inc. 192 P.3d 447, 450 (Colo.App.,2008).* A comparison of the two statutes is as follows:

NRS 116.3116 - NV Super Priority Language	**CO ST s 38-33.3-316 - CO Super Priority Language**
The lien is also prior to all security interests described in paragraph (b) to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien...	... a lien under this section is also prior to the security interests described in subparagraph (II) of paragraph (a) of this subsection (2) to the extent of: (I) An amount equal to the common expense assessments based on a periodic budget adopted by the association under section 38-33.3-315(1) which would have become due, in the absence of any acceleration, during the six months immediately preceding institution by either the association or any party holding a lien senior to any part of the association lien created under this section of an action or a nonjudicial foreclosure either to enforce or to extinguish the lien.

The Colorado Court of Appeals and the author of a Wake Forest Law Review article quoted by the Colorado courts both concluded that although the assessment portion of the super priority lien is limited to a finite number of months, because the assessment lien itself includes "fees, charges,

late charges, attorney fees, fines, and interest," these charges may be included as part of the Super Priority Lien Amount. The Colorado language is the same as NRS §116.3116, which states that "fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS §116.3102 are enforceable as assessments." Therefore, as NRS §116.3116 states that assessments are enforceable through liens, so are collection charges, late charges, fines, fees, etc., enforceable through liens. However, while such charges may be included in the Super Priority Lien Amount, as noted by the Colorado Supreme Court, the maximum amount of the super priority lien is capped:

> We conclude that the plain language of the statute supports Sunstone's position. Within the meaning of subsection (2)(b), a "lien under this section" may include any of the expenses listed in subsection (1), including "fees, charges, late charges, attorney fees, fines, and interest." Thus, although the maximum amount of a super priority lien is defined solely by reference to monthly assessments, the lien itself may comprise debts other than delinquent monthly assessments.
>
> We note that our view matches that of a commentator who has examined the uniform act on which § 38-33.3-316 was based. This commentator has concluded that, under the uniform act, the super priority lien may comprise debts other than delinquent assessments:
>
> A careful reading of the ... language reveals that the association's Prioritized Lien, like its Less-Prioritized Lien, may consist not merely of defaulted assessments, but also of fines and, where the statute so specifies, enforcement and attorney fees. The reference in section 3-116(b) to priority "to the extent of" assessments which would have been due "during the six months immediately preceding an action to enforce the lien" **merely limits the maximum amount of all fees or charges for common facilities use or for association services, late charges and fines, and interest which can come with the Prioritized Lien.** *First Atlantic Mortg., LLC v. Sunstone North Homeowners Ass'n 121 P.3d 254, 255 -256 (Colo.App.,2005).*

Thus, the words "to the extent of" (found in both Nevada's and Colorado's §3-116) limit the maximum amount of all fees, charges, costs and assessments which can comprise the super priority lien to an amount which does not exceed 9 times (6 times in Colorado) the association's monthly assessment amount. In Nevada and Colorado, collection costs and attorney's fees are not added on top of the 9 month amount, but may be incorporated within that amount, provided the Super Priority Lien Amount does not exceed 9 times the association's monthly assessments.

The Colorado Supreme Court recently punctuated the above point in its 2008 case of *BA Mortg., LLC v. Quail Creek Condominium Ass'n, Inc. 192 P.3d 447, 450 (Colo.App.,2008).*

> The association then has a super-priority lien over the lender's otherwise senior deed of trust in the event of a foreclosure commenced by the association or the lender, which lien is limited to delinquent assessments accruing within six months of the initiation of foreclosure proceedings. § 38-33.3-316(2)(b)(I). Further, the association's super-priority lien includes interest, charges, late charges, fines, and attorney fees **so long as the total does not exceed the limit**. *BA Mortg., LLC v. Quail Creek Condominium Ass'n, Inc. 192 P.3d 447, 451 (Colo.App.,2008)*

So long as the total of all assessments, fees, costs and other charges do not exceed the limit of an amount equal to 9 times (6 times in Colorado) of monthly assessments, the super priority lien includes interest, charges, late charges, etc. The Colorado Supreme Court, applying Colorado Code Section 38-33.3-116 (which is nearly identical to Nevada's NRS 116.3116,) made clear that the 6 or 9 month assessment total is a super priority limit which cannot be exceeded. This was "... to provide uniformity and predictability to lenders in order to promote the availability of financing." *BA Mortg., LLC v. Quail Creek Condominium Ass'n, Inc. 192 P.3d 447, 450 (Colo.App.,2008).*

Nowhere is this distinction made clearer than by the very law review article cited by the Colorado courts. James Winokur, in his treatise, "Meaner Lienor Community Associations: The "Super Priority" Lien and Related Reforms Under the Uniform Common Ownership Act," 27 Wake Forest L. Rev.353, states as follows:

> In its most heralded break with traditional law, UCIOA grants the association a lien priority over first mortgages recorded before any assessment delinquency "to the extent of the common expense assessments based on the periodic budget adopted by the association pursuant to section 3-115(a) which would have become due in the absence of acceleration during the six months immediately preceding an action to enforce the lien." Any excess of total assessment defaults, in addition to other lienable fines or costs over this six-month ceiling remains a lien on the property. The portion of the association lien securing this excess will be junior to the first mortgage on the unit, but senior to other mortgages and encumbrances not recorded before the declaration. Thus, although the association's lien is a single lien, its varying priority effectively separates the association's rights in a given unit into what may be conceived of as two liens, which are hereinafter referred to as the "Prioritized Lien" and the "Less-Prioritized Lien."
>
> A careful reading of the quoted language reveals that the association's Prioritized Lien, like its Less-Prioritized Lien, may consist not merely

> of defaulted assessments, but also of fines and, where the statute so specifies, enforcement and attorney fees. The reference in section 3-116(b) to priority "to the extent of" assessments which would have been due "during the six months immediately preceding an action to enforce the lien" merely limits the maximum amount of all fees or charges for common facilities use or for association services, late charges and fines, and interest which can come within the Prioritized Lien. So, for example, if a unit owner fell three months behind in assessments, the Prioritized Lien might include--in addition to the three months of arrearages--the other fees, charges, costs, etc. enforceable as assessments under UCIOA. However, for any assessments or other charges to be included within the Prioritized Lien, there must have been a properly adopted periodic budget promulgated "at least annually" by the association from which the appropriate six months assessment ceiling can be computed. *(James Winokur, Meaner Lienor Community Associations: The "Super Priority" Lien and Related Reforms Under the Uniform Common Ownership Act, 27 Wake Forest L. Rev.353. See Exhibit "3").*

The following examples may assist:

Case 1: A homeowner's assessments adopted through the association's last budget are $100 per month. He is 4 months delinquent ($400). The association has charged $80 in late fees and $375 in costs of collecting. The association has incurred no repair costs under NRS 116.310312. Thus, the total amount of the homeowner's delinquency is $855. Because the association has a lien for assessments under NRS 116.3116, and because any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments, and because the association lien is prior to all first security interests only to the extent of the assessments for common expenses during the 9 months immediately preceding institution of an action to enforce the lien, assuming the institution of an "action" by the association, the maximum super priority lien amount is $900 (9 x $100 of monthly assessments). Thus, the full $855 is included in the super priority lien. Mathematically, $855 (the association lien) is prior to the first mortgage lien to the extent of $900 (9 times the monthly assessments).

Case 2: A homeowner's assessments adopted through the association's last budget are $100 per month. He is 12 months delinquent ($1,200). The association has charged $240 in late fees and $1,600 in costs of collecting. The association has incurred no repair costs under NRS 116.310312. Thus, the total amount of the homeowner's delinquency is $3,040. Because the association has a lien for assessments under NRS 116.3116, and because any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of

subsection 1 of NRS 116.3102 are enforceable as assessments, and because the lien is prior to all first security interests only to the extent of the assessments for common expenses during the 9 months immediately preceding institution of an action to enforce the lien, assuming the institution of an "action" by the association, the maximum super priority lien amount is still $900 (9 x $100 of monthly assessments). Mathematically, $3,040 (the association lien) is prior to the first mortgagelien only to the extent of $900 (9 times the monthly assessments). Thus, $900 is the Super Priority Lien Amount and the remaining $2,140, while still a lien against the unit, is junior to the first mortgage. This analysis is consistent with the holdings of the Colorado Supreme Court and James Winokur's *Meaner Lienor Community Associations: The "Super Priority" Lien and Related Reforms Under the Uniform Common Ownership Act, 27 Wake Forest L. Rev.353.* Winokur described the $900 portion of the lien as the "Prioritized Lien" (i.e., super priority lien) and the $2,140 portion as the "Less Prioritized Lien" (i.e., junior lien).

Thus, the Super Priority Lien Amount does not change from neighbor to neighbor depending upon costs of collection. It is always an amount equal to 9 times the association's monthly assessment. The only time the Super Priority Lien Amount can change is when the assessments change in the association's budget or when the association incurs repair expenses for a unit pursuant to NRS §116.310312.

F. The Connecticut Amendment

As stated above, in 1991, Nevada and Colorado adopted the UCIOA with language mirroring UCIOA Section 3-116 (1982 version). Connecticut also adopted a version of the UCIOA, but with a significant and fundamental amendment to §3-116. This amendment was adopted by Connecticut in 1991 (see C.G.S. Section 47-258(b) as amended by No. 91-359 of the Public Acts of 1991). A comparison of the three statutes as originally enacted is as follows:

///

///

///

///

///

NV Super Priority Language	CO Super Priority Language	CT Super Priority Language
The lien is also prior to all security interests described in paragraph (b) to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 6 months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.	... a lien under this section is also prior to the security interests described in subparagraph (II) of paragraph (a) of this subsection (2) to the extent of: (I) An amount equal to the common expense assessments based on a periodic budget adopted by the association under section 38-33.3-315(1) which would have become due, in the absence of any acceleration, during the six months immediately preceding institution by either the association or any party holding a lien senior to any part of the association lien created under this section of an action or a nonjudicial foreclosure either to enforce or to extinguish the lien.	The lien is also prior to all security interests described in subdivision (2) of this subsection to the extent of (A) an amount equal to the common expense assessments based on the periodic budget adopted by the association pursuant to subsection (a) of section 47-257 which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce either the association's lien or a security interest described in subdivision (2) of this subsection **and (B) the association's costs and attorney's fees in enforcing its lien.**

As can be observed, Connecticut added a new provision to UCIOA's Section 3-116, which Nevada and Colorado did not adopt. While Nevada and Colorado's super priority lien was limited to the extent of an amount equal to just 6 months of assessments only, the Connecticut legislature intentionally permitted adding the association's costs and attorney's fees on top of the 6 month assessment figure. This is a fundamental distinction between Connecticut's law, and the laws of the states of Nevada and Colorado (and other states like Alaska, Minnesota, West Virginia, and New Jersey).

However, unlike in Connecticut, in the states of Nevada and Colorado, consistent with the original language of the 1982 UCIOA, while the Super Priority Lien Amount may include collection costs and charges, the sum total of all assessments, fees, and collection costs may not exceed the figure equaling 6 times (now 9 times in Nevada plus unit repair costs) the monthly assessments. As previously mentioned, any amounts which are over that limit still constitute a lien on the homeowner's unit, but it constitutes a lien which is junior to the first mortgage (i.e., a less prioritized lien which may be extinguished by a first mortgage holder's foreclosure).

In July of 2008, the National Conference of Commissioners on Uniform State Laws held its annual conference where it incorporated Connecticut's costs and fees amendment into the Uniform Law Commissioners' 2008 revised version of the UCIOA. Under the 2008, revised UCIOA (which has not been adopted in Nevada,) the UCIOA super priority lien now consists of both six months of assessments and attorney's fees and costs:

> (c) A The lien under this section is also prior to all security interests described in subsection (b)(2) clause (ii) above to the extent of both the common expense assessments based on the periodic budget adopted by the association pursuant to Section 3-115(a) which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien and reasonable attorney's fees and costs incurred by the association in foreclosing the association's lien. *2008 Amendments to the UCIOA*

As noted in the comments section on Page 198 of the 2008 Amendments to the UCIOA, "First, subsection (a) is amended to add the cost of the association's reasonable attorneys fees and court costs to the total value of the association's existing 'super lien' – currently, 6 months of regular common assessments. This amendment is identical to the amendment adopted by Connecticut in 1991; see C.G.S. Section 47-258(b). The increased amount of the association's lien has been approved by Fannie Mae and local lenders and has become a significant tool in the successful collection efforts enjoyed by associations ***in that state***." *(See Exhibit "4").*

It is vital to note, however, that in 2009 Nevada had the opportunity to adopt the newly revised UCIOA, but chose not to. The October 1, 2009, revisions to NRS §116.3116 are conspicuously absent of the Connecticut amendment. Instead, the Nevada legislature increased the super priority lien cap to an amount equal to 9 times the association's monthly assessments, up from 6 times, and also added unit repairs costs under NRS §116.310312 to the super priority lien.

Because Nevada and Colorado (and other states like Alaska, Minnesota, West Virginia, and New Jersey) adopted the unaltered super priority language of the original1982 UCIOA, and did not adopt the Connecticut amendment, the current state of the law regarding super priority lien amounts in states which did not adopt the Connecticut amendment is as the Colorado courts have held: "The reference in section 3-116(b) to priority "to the extent of" assessments which would have been due "during the six months immediately preceding an action to enforce the lien" **merely limits the**

maximum amount of all fees or charges for common facilities use or for association services, late charges and fines, and interest which can come with the Prioritized Lien..." *First Atlantic Mortg., LLC v. Sunstone North Homeowners Ass'n 121 P.3d 254, 255 -256 (Colo.App.,2005),* and "... the association's super-priority lien includes interest, charges, late charges, fines, and attorney fees **so long as the total does not exceed the limit**." *BA Mortg., LLC v. Quail Creek Condominium Ass'n, Inc. 192 P.3d 447, 451 (Colo.App.,2008).*

Again, collection costs are not added on top of the 9 month amount (as in Connecticut,) but may be incorporated within that amount (as in Nevada, Colorado, Alaska, Minnesota, West Virginia, and New Jersey). While the Nevada legislature may, at some point in the future, wish to adopt the Connecticut amendment, the current law in Nevada is as stated by the Colorado courts and James Winokur's commentary.

V.

CONCLUSION

This Petition requested action in two areas:

1. Pursuant to NRS §116.3116, what portion of a homeowners' association lien, if any, is superior to the unit's first mortgage lender's security interest ("super priority lien") and may the sum total of the super priority lien amount, whether it be comprised of assessments, fees, costs of collection, or other charges, ever exceed 9 times the monthly assessment amount for common expenses based on the periodic budget adopted by the association pursuant to NRS §116.3115, plus any charges incurred by the association on a unit pursuant to NRS §116.310312 (unit repair expenses)?

2. Pursuant to NRS §116.3116, does a "super priority lien" exist in the absence of a homeowners' association's failure to file a complaint with a court to enforce the lien, i.e., the failure to institute a "civil action" as defined by Nevada Rules of Civil Procedure 2 and 3?

As the existing law makes clear, in Nevada, assessments, late fees, costs of collecting and other charges may be included in the Super Priority Lien Amount. However, as the plain language of NRS §116.3116 states, and as noted by the Colorado courts and James Winokur's commentary, there is a ceiling on the Super Priority Lien Amount of 9 times (6 times in other states) the association's monthly assessment amount for common expenses based on the periodic budget adopted by the association (plus repair expenses pursuant to NRS §116.310312). In addition, the total amount of assessments, late fees, costs of collecting and other charges may not exceed that

ceiling in order to be considered a "super priority lien" rather than a "junior" lien. With the exception of the repair expenses pursuant to NRS §116.310312, the Super Priority Lien Amount is limited to a finite number, i.e., an amount which cannot exceed a figure equaling 9 times the monthly assessments which immediately preceding institution of an action to enforce the lien.

Additionally, as a "condition precedent" to elevate a portion of a homeowners' association's lien from "junior" status to "super priority" status, a homeowners' association must file an "action" to enforce the lien. Nevada Rules of Civil Procedure 2 states, "There shall be one form of action to be known as 'civil action.'" Nevada Rules of Civil Procedure 3 states, "A civil action is commenced by filing a complaint with the court." Thus, until a homeowners' association files a complaint with the court to enforce its lien, no amount of its lien can achieve "super priority" status. Therefore, while the lien remains a lien on the homeowner's unit, it is in "junior" status to the first security holder's deed of trust. Thus, until the filing of a complaint with the court to enforce its lien, upon the first mortgage holder's foreclosure, the association's junior lien is extinguished in its entirety. Pursuant to NRS §116.3116, a homeowners' association's filing of a complaint with the court to enforce its lien is a condition precedent for any portion of its lien to achieve "super priority" status.

Dated this 25 day of June, 2010.

ADAMS LAW GROUP, LTD.

JAMES R. ADAMS, ESQ.
Nevada Bar No. 6874
ASSLY SAYYAR, ESQ.
Nevada Bar No. 9178
8681 W. Sahara Ave., Suite 280
Las Vegas, Nevada 89117
Tel: 702-838-7200
Fax: 702-838-3636
james@adamslawnevada.com
assly@adamslawnevada.com
Attorney for Petitioners

Ex. 2

2785 E. Desert Inn Road, Suite 180
Las Vegas, Nevada 89121
(702) 486-4120

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
FINANCIAL INSTITUTIONS DIVISION

1179 Fairview Drive, Ste. 201
Carson City, Nevada 89701
(775) 687-5522

In Re:

The Petition of Prem Investment, LLC, a Nevada limited liability company; Rutt Premsrirut, Manager, for an application for Advisory Opinion and Declaratory Order pursuant to NAC 232.040,

Petitioner.

DECLARATORY ORDER AND ADVISORY OPINION REGARDING COLLECTION AGENCY FEES FROM HOMEOWNER ASSOCIATION LIENS FOLLOWING FORECLOSURE

DECLARATORY ORDER AND ADVISORY OPINION REGARDING COLLECTION AGENCY FEES FROM HOMEOWNER ASSOCIATION LIENS FOLLOWING FORECLOSURE

Nevada, Department of Business and Industry, Financial Institutions Division (hereinafter "Division") hereby issues its Declaratory Order and Advisory Opinion regarding Petitioner PREM INVESTMENTS, LLC (hereafter "the Petitioner") regarding the collection of fees and charges by collection agencies and community managers for homeowners associations following the foreclosure of residential real estate.

JURISDICTION

1. The business of collecting claims for others or of soliciting the right to collect or receive payment from another of any claim in the State of Nevada is governed by chapter 649 of the Nevada Revised Statutes (NRS) and chapter 649 of the Nevada Administrative Code (NAC). The State of Nevada, Department of Business and Industry, Financial Institutions Division (hereinafter "Division") has primary jurisdiction for the licensing and regulation of persons operating and/or engaging in collection services. NRS 649.026.

2. The rule regarding the issuing of Declaratory Orders and Advisory Opinions by this agency are governed by NRS 233B.120, which reads as follows:

> Each agency shall provide by regulation for the filing and prompt disposition of petitions for declaratory orders and advisory opinions as to the applicability of any statutory provision, agency regulation or decision of the agency. Declaratory orders disposing of petitions in such cases shall have the same status as agency decisions. A copy of the declaratory order or advisory opinion shall be mailed to the petitioner.

3. The Nevada Administrative Code (NAC) 323.040(1) establishes the procedure for filing a petition for declaratory order as follows:

> Except as otherwise provided in subsection 4, an interested person may petition the Director to issue a declaratory order or advisory opinion concerning the applicability of a statute, regulation or decision of the Department or any of its divisions.

4. Upon receipt by the Director, the petition is then referred to the Commissioner for the Financial Institutions Division for determination. NAC 232.045.

FACTUAL BACKGROUND

5. Petitioner PREM INVESTMENTS, LLC is registered under the laws of the State of Nevada and has submitted this Petition by and through its attorney, James Adams, Esq. from the law firm Adams Law Group, Ltd.

6. On September 24, 2010, Petitioner filed its Petition for a Declaratory Order and Advisory Opinion with the Division.

7. Petitioners present a factual scenario which is all too common in the State of Nevada. A homeowner is unable to pay the mortgage and the monthly assessments to the homeowners' association.

8. Two actions are initiated. The bank begins foreclosure proceedings on the property.

9. At the same time, the homeowners association (hereafter "the association") initiates collection of its delinquent assessments by filing a lien on the property.

10. The property is sold at foreclosure, but the association's assessments continue because the association maintains a priority lien for its assessments.

11. The association's claim for assessments is sent to a collection agency or a community management company acting as a collection agency. When the bank attempts to sell the property, the new homeowner must pay the assessments and fees associated with the lien in order to obtain a clear title.

12. The lien includes additional fees and charges added by the collection agency, which often dwarf the amount of the original assessment.

13. Moreover, the fees being charged to the current homeowner or subsequent purchaser are generally not part of the collection contract between the agency and the association nor are they included in the governing documents of the association.

14. Therefore, the association never approves of the fees and charges added to the original assessment and fines charged to the homeowner who is subject to a lien or a subsequent purchaser at a foreclosure sale.

15. While the central focus of the issues raised by the Petition for Declaratory Order and Advisory Opinion concerns the priority of collection fees being charged, the Division has additional concerns regarding the undisclosed nature of these fees which are charged to homeowners and purchasers alike.

QUESTION PRESENTED

16. The Petitioner presents the following question for an advisory opinion:

a. Under NRS 116.3116, a homeowners' association has a lien on a unit for any assessments levied against that unit and any fines imposed against the unit's owner from the time the assessment or fine becomes due. Pursuant to NRS 116.3116, what portion of the lien, if any, is superior to the unit's first mortgage lender's security interest ("super priority lien") and may the sum total of the super priority lien amount, whether it be comprised of assessments, fees,

costs of collection or other charges, ever exceed 9 times the monthly assessment amount for common expenses based on the periodic budget adopted by the association pursuant to NRS 1116.3115 plus any charges incurred by the association on a unit pursuant to NRS 116.310312 (unit repair expenses)?

b. Pursuant to NRS 116.3116, does a "super priority lien" exist in the absence of a homeowners' association's failure to file a complaint with the court to enforce the lien, i.e., the failure to institute a "civil action" as defined by Nevada Rules of Civil Procedure 2 and 3?

17. While the questions address an interpretation of NRS Chapter 116, the Division will address the issues as they relate to collection agencies and the implications of the federal Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692f, prohibition against false, deceptive or misleading communications.

18. The federal Fair Debt Collection Practices Act (FDCPA) was made applicable to licensed collection agencies under NRS 649.370. More generally, a violation of the FDCPA can be considered a deceptive trade practice pursuant to NRS 598.023(3) which defines deceptive trade practice as "Violates a state or federal statute or regulation relating to the sale or lease of goods or services."

LEGAL ANALYSIS

19. NRS 649.020(3)(a) defines collection agency as including "a community manager while engaged in the management of a common-interest community or the management of an association of a condominium hotel if the community manager, or any employee, agent or affiliate of the community manager, performs or offers to perform any act associated with the foreclosure of a lien pursuant to NRS 116.31162 to 116.31168, inclusive, or 116B.635 to 116B.660, inclusive."

20. As a collection agency, any "interest, charge, fee or expense" added to the principal obligation must be "authorized by law or as agreed to by the parties." NRS 649.375(2).

21. As the associations have not established amounts of fees for collection services in their governing documents and collection agency contracts do not include the type and amount of fees which will be collected, the analysis of the questions presented will focus on what, if any, is permitted by law to be collected.

A. **Is the amount of the "super priority" lien established pursuant to NRS 116.3116 capped at the amount of 9 months of assessments?**

22. Pursuant to NRS 116.3116(1), the association can impose a lien for assessments and the fees and late charges for those assessments.

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

23. The association can impose a lien on assessments which have priority over the first mortgage on the real property. However, the lien amount is not without limits and the statute is clear that the amount of a lien which retains its priority status is "to the extent" that those assessments would have become due in the preceding nine (9) months prior to enforcement of the lien. NRS 116.3116(2) reads in part as follows:

> The lien is also prior to all security interests described in paragraph (b) to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and **to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien,** .... This subsection does not affect the priority of mechanics' or materialmen's liens, or

the priority of liens for other assessments made by the association.

24. NRS 116.3116(1) includes as part of the lien for assessments fees, charges, interest and costs which are permitted by NRS 116.3102(1)(n). That statute permits the addition of fees by "the association" which are "**reasonable** charges for the preparation and recordation of any amendments to the declaration or **any statements of unpaid assessments, and impose reasonable fees**, not to exceed the amounts authorized by NRS 116.4109, for preparing and furnishing the documents and certificate required by that section." NRS 116.3102(1)(n).

25. The types of charges authorized by NRS 116.4109 are extensive. The list of charges which can be collected, include, "any transfer fees, transaction fees or any other fees associated with the resale of a unit," NRS 116.4109(1)(e), and "association fees, fines, assessments, late charges or penalties, interest rates on delinquent assessments, additional costs for collecting past due fines and charges for opening or closing any file for each unit." NRS 116.4109(1)(f).

26. Since the statute includes the additional fees and charges as part of the "super priority" lien, then those fees, charges, interest and penalties, as stated above, are also subject to the nine (9) month assessment limitation established in NRS 116.3116(2).

27. As the Petitioner points out, numerous policy reasons exist to limit the amount which has priority not the least of which is to provide needed understanding by the first mortgage holder that its security interest in the property is not reduced by assessments and the unlimited amount of fees, charges, interest, penalties, fines and interest imposed by the association or its collection agent.

28. Further, Petitioner is correct in stating that the remainder of the lien is not removed from the property, but only the priority status over the first mortgage holder.

29. The Division adopts the interpretation that NRS 116.3116(2) is a limit on the amount an association can place a lien which has priority over the first mortgage holder.

30. While the Petitioner refers to this amount as "9 times" the monthly assessment by the association, that statement would not be entirely correct because changes in the amount of assessments may occur during the time period. The amount of the lien which has priority over the first mortgage cannot exceed what the association would have regularly charged for common expenses for the unit in the nine (9) months prior to the institution of an action to enforce a lien.

31. Any balance exceeding the nine (9) month limitation would be subordinate to the first mortgage holder's security interest.

32. Consequently, pursuant to the requirements of NRS 649.375(2)(a), the only charges "authorized by law" to collect after the foreclosure of the first mortgage are those that do not exceed the amount charged over the preceding nine (9) months of normal association assessments.

33. The Division further concludes that additional fees and charges can be included in the "super priority" lien as permitted by statute but the total of all of the amounts cannot exceed the nine (9) month assessment limitation.

34. While the associations and their collection agencies should be mindful that the charges must be reasonable, the Division concludes that collection agencies are not permitted to add fees of any amount without the expressed approval of the association.

35. As the statutes cited above make clear, the association is the entity required to impose the fees and charges, not its collection agency. NRS 116.3116(1) ("The **association** has the lien"); NRS 116.3102(1) ("the **association** may do any or all of the following ..."); NRS 116.4109(3) ("the **association** shall furnish all of the following to the unit's owner or his or her authorized agent for inclusion in the resale package ...").

36. Consequently, no additional collection charges are "permitted by law" unless they are first approved by the association.

37. NRS 649.375(2) prohibits the collection of "interest, charge, fee or expense" which is not "authorized by law or as agreed to by the parties..."

38. A similar requirement exists in the federal Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692f(1) defining an "unfair practice" as "[t]he collection of amount (including any interest, fee, charge or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law."

39. As stated above, the association is permitted to make additional charges to the assessments for the collection of assessments, however, the statute requires that the association approve the charge, and it may not leave it to the collection agency to determine the amount of fees it may collect.

40. The collection agencies are operating as agents of the homeowners' association and it is a relationship based upon contract. *Hamm v. Arrowcreek Homeowners' Ass'n*, 183 P.3d 895, 902 (Nev. 2008) ("An agency relationship results when one person possesses the contractual right to control another's manner of performing the duties for which he or she was hired.") However, the collection agency, alone, does not have the power to create and impose fees, where, as here, the statutes have delegated that authority to the association.

41. Therefore, the Division further concludes that if any charges or fees are added to the assessments to be charged pursuant to NRS 116.3102, or added to a lien pursuant to NRS 116.3116, then those fees, interest and charges must have been expressly approved by the association pursuant to its governing documents or in the contract with the collection agency prior to the time those fees, charges, interest, costs and penalties were incurred.

B. Is the association required to file a civil action prior to asserting its lien for assessments with "super priority" status?

42. Petitioner requests clarification of what is meant by the "action" in NRS 116.3116 in order to determine the "super priority" status of the association's lien. As above NRS 116.3116(2) reads, in part, as follows:

> The lien is also prior to all security interests described in paragraph (b) to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and **to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien,** .... This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.

43. Petitioner's claim that the language "institution of an action to enforce the lien" creates a statutory requirement that the association is required to file a civil action before the lien can achieve priority status. The Division disagrees. Nothing in the statute would indicate an intent to require a court action to secure priority status during the non-judicial foreclosure process.

44. As the Nevada Supreme Court stated, in order to determine what is meant by a term, an examination of the context and spirit of the statute is necessary.

> To clarify a statute's ambiguity, we look at the "context" and "spirit" in which it was enacted to effect a construction that best represents the legislative intent in enacting the statute. *Boucher v. Shaw*, 124 Nev. 96, —, 196 P.3d 959, 961 (2008). Our goal is to read "statutes within a statutory scheme harmoniously with one another to avoid an unreasonable or absurd result." *Allstate Insurance Co. v. Fackett*, 206 P.3d 572, 576 (2009).

Citizens for Cold Springs v. City of Reno, 218 P.3d 847, 851 (Nev.,2009)(citations included)..

45. In the present case, the term "action" appears at the conclusion of the point of measurement for the limitation period in order to determine when to begin the nine (9) month period.

46. In no other part of NRS 116.3116 does the statute mention any civil action requirement for either the creation of the lien or its status of priority. NRS 116.3116(1)

Ex. 3

James Adams

From: Terry Johnson [TerryJohnson@business.nv.gov]
Sent: Monday, November 12, 2012 12:39 PM
To: 'james@adamslawnevada.com'
Subject: Super Priority Lien Advisory Opinion

Good Morning Mr. Adams:

I tried reaching you telephonically a few moments ago but was not able to leave a voice message. I was calling to give you a status update on the advisory opinion you previously requested of this office concerning the super priority lien.

As you may know, I will be leaving my position as Director of Business & Industry for an appointment as a Member of the State Gaming Control Board, starting November 13, 2012. However, before leaving I wanted to ensure that the issues presented in the advisory opinion petition were appropriately addressed.

In light of the Court's ruling earlier this year in the matter of *State of Nevada, Financial Institutions Div. vs. Nevada Assn. Services, et al.*, it appears the appropriate entity to render the requested opinion would be the Real Estate Division of the Department of Business & Industry.

Accordingly, I recently met with representatives of the Real Estate Division and their legal counsel to discuss the various advisory opinion requests that had been submitted, including yours, regarding the super priority lien. The determination was made that the Real Estate Division would issue an advisory opinion responsive to the questions presented in the various opinion requests. Please be advised that this advisory opinion should be finalized within the next 30-45 days.

Thanks,

TERRY JOHNSON
Director

Nevada State Department of Business & Industry
555 E. Washington Avenue Suite 4900
Las Vegas, NV 89101
702-486-2755

Ex. 4

BRIAN SANDOVAL
Governor

STATE OF NEVADA

BRUCE H. BRESLOW
Director

GAIL J. ANDERSON
Administrator

DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION
www.red.state.nv.us

December 12, 2012

Prem Investments
520 South Fourth Street, Second Floor
Las Vegas, Nevada 89101

Dear Prem Investments:

In November, the prior Director of the Nevada Department of Business & Industry, Terry Johnson, informed you that your request for an advisory opinion from the Director's office was sent by Director Johnson to the Real Estate Division. Enclosed please find the Division's Advisory Opinion #13-01, issued in response to your request for an advisory opinion on the questions posed concerning the super priority lien in NRS 116.3116.

This advisory opinion will be posted on the Division's web site. It provides the Division's interpretation of NRS 116 statutes applicable to the questions posed.

Sincerely,

Gail J. Anderson
Administrator

Encl. Advisory Opinion 13-01

C: James R. Adams, Esq.

2501 E. Sahara Avenue, Suite 102, Las Vegas, Nevada 89104-4137 Telephone: (702) 486-4033 Fax: (702) 486-4275
1179 Fairview Drive, Suite E, Carson City, Nevada 89701-5453 Telephone: (775) 687-4280 Fax: (775) 687-4868

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION
ADVISORY OPINION

Subject:	Advisory No.	13-01	20 pages
The Super Priority Lien	Issued By:	Real Estate Division	
	Amends/ Supersedes	N/A	
Reference(s): NRS 116.3102; ; NRS 116.310312; NRS 116.310313; NRS 116.3115; NRS 116.3116; NRS 116.31162; Commission for Common Interest Communities and Condominium Hotels Advisory Opinion No. 2010-01			Issue Date: December 12, 2012

QUESTION #1:

Pursuant to NRS 116.3116, may the portion of the association's lien which is superior to a unit's first security interest (referred to as the "super priority lien") contain "costs of collecting" defined by NRS 116.310313?

QUESTION #2:

Pursuant to NRS 116.3116, may the sum total of the super priority lien ever exceed 9 times the monthly assessment amount for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115, plus charges incurred by the association on a unit pursuant to NRS 116.310312?

QUESTION #3:

Pursuant to NRS 116.3116, must the association institute a "civil action" as defined by Nevada Rules of Civil Procedure 2 and 3 in order for the super priority lien to exist?

SHORT ANSWER TO #1:

No. The association's lien does not include "costs of collecting" defined by NRS 116.310313, so the super priority portion of the lien may not include such costs. NRS 116.310313 does not say such charges are a lien on the unit, and NRS 116.3116 does not make such charges part of the association's lien.

SHORT ANSWER TO #2:

No. The language in NRS 116.3116(2) defines the super priority lien. The super priority lien consists of unpaid assessments based on the association's budget and NRS 116.310312 charges, nothing more. The super priority lien is limited to: (1) 9 months of assessments; and (2) charges allowed by NRS 116.310312. The super priority lien based on assessments may not exceed 9 months of assessments as reflected in the association's budget, and it may not include penalties, fees, late charges, fines, or interest. References in NRS 116.3116(2) to assessments and charges pursuant to NRS 116.310312 define the super priority lien, and are not merely to determine a dollar amount for the super priority lien.

SHORT ANSWER TO #3:

No. The association must *take action* to enforce its super priority lien, but it need not institute a civil action by the filing of a complaint. The association may begin the process for foreclosure in NRS 116.31162 or exercise any other remedy it has to enforce the lien.

ANALYSIS OF THE ISSUES:

This advisory opinion – provided in accordance with NRS 116.623 – details the Real Estate Division's opinion as to the interpretation of NRS 116.3116(1) and (2). The Division hopes to help association boards understand the meaning of the statute so they are better equipped to represent the interests of their members. Associations are encouraged to look at the entirety of a situation surrounding a particular deficiency and evaluate the association's best option for collection. The first step in that analysis is to understand what constitutes the association's lien, what is not part of the lien, and the status of the lien compared to other liens recorded against the unit.

Subsection (1) of NRS 116.3116 describes what constitutes the association's lien; and subsection (2) states the lien's priority compared to other liens recorded against a unit. NRS 116.3116 comes from the Uniform Common Interest Ownership Act (1982) (the "Uniform Act"), which Nevada adopted in 1991. So, in addition to looking at the language of the relevant Nevada statute, this analysis includes references to the Uniform Act's equivalent provision (§ 3-116) and its comments.

I. NRS 116.3116(1) DEFINES WHAT THE ASSOCIATION'S LIEN CONSISTS OF.

NRS 116.3116(1) provides generally for the lien associations have against units within common-interest communities. NRS 116.3116(1) states as follows:

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

(emphasis added).

Based on this provision, the association's lien includes assessments, construction penalties, and fines imposed against a unit when they become due. In addition – unless the declaration otherwise provides – penalties, fees, charges, late charges, fines, and interest charged pursuant to NRS 116.3102(1)(j) through (n) are also part of the association's lien in that such items are enforceable as if they were assessments. Assessments can be foreclosed pursuant to NRS 116.31162, but liens for fines and penalties may not be foreclosed unless they satisfy the requirements of NRS 116.31162(4). Therefore, it is important to accurately categorize what comprises each portion of the association's lien to evaluate enforcement options.

A. "COSTS OF COLLECTING" (DEFINED BY NRS 116.310313) ARE NOT PART OF THE ASSOCIATION'S LIEN

NRS 116.3116(1) does not specifically make costs of collecting part of the association's lien, so the determination must be whether such costs can be included under the incorporated provisions of NRS 116.3102. NRS 116.3102(1)(j) through (n) identifies five very specific categories of penalties, fees, charges, late charges, fines, and interest associations may impose. This language encompasses all penalties, fees,

charges, late charges, fines, and interest that are part of the lien described in NRS 116.3116(1).

NRS 116.3102(1)(j) through (n) states:

> 1. Except as otherwise provided in this section, and subject to the provisions of the declaration, the association may do any or all of the following: ...
> (j) Impose and receive any payments, fees or charges for the use, rental or operation of the common elements, other than limited common elements described in subsections 2 and 4 of NRS 116.2102, and for services provided to the units' owners, including, without limitation, any services provided pursuant to NRS 116.310312.
> **(k) Impose charges for late payment of assessments pursuant to NRS 116.3115.**
> (l) Impose construction penalties when authorized pursuant to NRS 116.310305.
> (m) Impose reasonable fines for violations of the governing documents of the association only if the association complies with the requirements set forth in NRS 116.31031.
> (n) Impose reasonable charges for the preparation and recordation of any amendments to the declaration or any statements of unpaid assessments, and impose reasonable fees, not to exceed the amounts authorized by NRS 116.4109, for preparing and furnishing the documents and certificate required by that section.

(emphasis added).

Whatever charges the association is permitted to impose by virtue of these provisions are part of the association's lien. Subsection (k) – emphasized above – has been used – the Division believes improperly – to support the conclusion that associations may include costs of collecting past due obligations as part of the association's lien. The Commission for Common Interest Communities and Condominium Hotels issued Advisory Opinion No. 2010-01 in December of 2010. The Commission's advisory concludes as follows:

> An association may collect as a part of the super priority lien (a) interest permitted by NRS 116.3115, (b) late fees or charges authorized by the declaration, (c) charges for preparing any statements of unpaid assessments and (d) the "costs of collecting" authorized by NRS 116.310313.

Analysis of what constitutes the *super priority lien* portion of the association's lien is discussed in Section III, but the Division agrees that the association's lien does include items noted as (a), (b) and (c) of the Commission's advisory opinion above. To support item (d), the Commission relies on NRS 116.3102(1)(k) which gives associations the power to: "Impose charges for late payment of assessments pursuant to NRS 116.3115." This language would include interest authorized by statute and late fees if authorized by the association's declaration.

"Costs of collecting" defined by NRS 116.310313 is too broad to fall within the parameters of charges for late payment of assessments.[1] By definition, "costs of collecting" relate to the collection of past due "obligations." "Obligations" are defined as "any assessment, fine, construction penalty, fee, charge or interest levied or imposed against a unit's owner."[2] In other words, costs of collecting includes more than "charges for late payment of assessments."[3] Therefore, the plain language of NRS 116.3116(1) does not incorporate costs of collecting into the association's lien. Further review of the relevant statutes and legislative action supports this conclusion.

B. PRIOR LEGISLATIVE ACTION SUPPORTS THE POSITION THAT COSTS OF COLLECTING ARE NOT PART OF THE ASSOCIATION'S LIEN DESCRIBED BY NRS 116.3116(1).

The language of NRS 116.3116(1) allows for "charges for late payment of assessments" to be part of the association's lien.[4] "Charges for late payments" is not the same as "costs of collecting." "Costs of collecting" was first defined in NRS 116 by the adoption of NRS 116.310313 in 2009. NRS 116.310313(1) provides for the association's

---

[1] Charges for late payment of assessments comes from NRS 116.3102(1)(k) and is incorporated into NRS 116.3116(1).

[2] NRS 116.310313.

[3] "Costs of collecting" includes any fee, charge or cost, by whatever name, including, without limitation, any collection fee, filing fee, recording fee, fee related to the preparation, recording or delivery of a lien or lien rescission, title search lien fee, bankruptcy search fee, referral fee, fee for postage or delivery and any other fee or cost that an association charges a unit's owner for the investigation, enforcement or collection of a past due obligation. The term does not include any costs incurred by an association if a lawsuit is filed to enforce any past due obligation or any costs awarded by a court. NRS 116.310313(3)(a).

[4] NRS 116.3102(1)(k) (incorporated into NRS 116.3116(1)).

right to charge a unit owner "reasonable fees to cover the costs of collecting any past due obligation." NRS 116.310313 is not referenced in NRS 116.3116 or NRS 116.3102, nor does NRS 116.310313 specifically provide for the association's right to lien the unit for such costs.

In contrast, NRS 116.310312, also adopted in 2009, allows an association to enter the grounds of a unit to maintain the property or abate a nuisance existing on the exterior of the unit. NRS 116.310312 specifically provides for the association's expenses to be a lien on the unit and provides that the lien is prior to the first security interest.[5] NRS 116.3102(1)(j) was amended to allow these expenses to be part of the lien described in NRS 116.3116(1). And NRS 116.3116(2) was amended to allow these expenses to be included in the association's super priority lien.

The Commission's advisory opinion from December 2010 also relies on changes to the Uniform Act from 2008 to support the notion that collection costs should be part of the association's super priority lien. Nevada has not adopted those changes to the Uniform Act. Since the Commission's advisory opinion, the Nevada Legislature had an opportunity to clarify the law in this regard.

In 2011, the Nevada Legislature considered Senate Bill 174, which proposed changes to NRS 116.3116. S.B. 174 originally included changes to NRS 116.3116(1) such that the association's lien would specifically include "costs of collecting" as defined in NRS 116.310313. S.B. 174 proposed changes to NRS 116.3116 (1) and (2) to bring the statute in line with the changes to the same provision in the Uniform Act amended in 2008.

The Uniform Act's amendments were removed from S.B. 174 by the first reprint. As amended, S.B. 174 proposed changes to NRS 116.3116(2) expanding the super priority lien amount to include costs of collecting not to exceed $1,950, in addition to 9 months

[5] See NRS 116.310312(4) and (6).

of assessments. S.B. 174 was discussed in great detail and ultimately died in committee.[6]

Also in 2011, Senate Bill 204 – as originally introduced – included changes to NRS 116.3116(1) to expand the association's lien to include attorney's fees and costs and "any other sums due to the association."[7] The bill's language was taken from the Uniform Act amendments in 2008. All changes to NRS 116.3116(1) were removed from the bill prior to approval.

The Nevada Legislature's actions in the 2009 and 2011 sessions are indicative of its intent not to make costs of collecting part of the lien. The Nevada Legislature could have made the costs of collecting part of the association's lien, like it did for costs under NRS 116.310312. It did not do so. In order for the association to have a right to lien a unit under NRS 116.3116(1), the charge or expense must fall within a category listed in the plain language of the statute. Costs of collecting do not fall within that language. Based on the foregoing, the Division concludes that the association's lien does not include "costs of collecting" as defined by NRS 116.310313.

A possible concern regarding this outcome could be that an association may not be able to recover their collection costs relating to a foreclosure of an assessment lien. While that may seem like an unreasonable outcome, a look at the bigger picture must be considered to put it in perspective. NRS 116.31162 through NRS 116.31168, inclusive, outlines the association's ability to enforce its lien through foreclosure. Associations have a lien for assessments that is enforced through foreclosure. The association's expenses are reimbursed to the association from the proceeds of the sale. NRS 116.31164(3)(c) allows the proceeds of the foreclosure sale to be distributed in the following order:

(1) The reasonable expenses of sale;

---

[6] See http://leg.state.nv.us/Session/76th2011/Reports/history.cfm?ID=423.
[7] Senate Bill No. 204 – Senator Copening, Sec. 49, ln. 1-16, February 28, 2011.

(2) 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 the declaration, reasonable attorney's fees and other legal expenses incurred by the association;
(3) Satisfaction of the association's lien;
(4) Satisfaction in the order of priority of any subordinate claim of record; and
(5) Remittance of any excess to the unit's owner.

Subsections (1) and (2) allow the association to receive its expenses to enforce its lien through foreclosure *before* the association's lien is satisfied. Obviously, if there are no proceeds from a sale or a sale never takes place, the association has no way to collect its expenses other than through a civil action against the unit owner. Associations must consider this consequence when making decisions regarding collection policies understanding that every delinquent assessment may not be treated the same.

II. NRS 116.3116(2) ESTABLISHES THE PRIORITY OF THE ASSOCIATION'S LIEN.

Having established that the association has a lien on the unit as described in subsection (1) of NRS 116.3116, we now turn to subsection (2) to determine the lien's priority in relation to other liens recorded against the unit. The lien described by NRS 116.3116(1) is what is referred to in subsection (2). Understanding the priority of the lien is an important consideration for any board of directors looking to enforce the lien through foreclosure or to preserve the lien in the event of foreclosure by a first security interest.

NRS 116.3116(2) provides that the association's lien is prior to all other liens recorded against the unit *except:* liens recorded against the unit before the declaration; first security interests (first deeds of trust); and real estate taxes or other governmental assessments. There is one exception to the exceptions, so to speak, when it comes to priority of the association's lien. This exception makes a portion of an association's lien prior to the first security interest. The portion of the association's lien given priority status to a first security interest is what is referred to as the "super priority lien" to

distinguish it from the other portion of the association's lien that is subordinate to a first security interest.

The ramifications of the super priority lien are significant in light of the fact that superior liens, when foreclosed, remove all junior liens. An association can foreclose its super priority lien and the first security interest holder will either pay the super priority lien amount or lose its security. NRS 116.3116 is found in the Uniform Act at § 3-116. Nevada adopted the original language from § 3-116 of the Uniform Act in 1991. From its inception, the concept of a super priority lien was a novel approach. The Uniform Act comments to § 3-116 state:

> [A]s to prior first security interests the association's lien does have priority for 6 months' assessments based on the periodic budget. A significant departure from existing practice, the 6 months' priority for the assessment lien strikes an equitable balance between the need to enforce collection of unpaid assessments and the obvious necessity for protecting the priority of the security interests of lenders. As a practical matter, secured lenders will most likely pay the 6 months' assessments demanded by the association rather than having the association foreclose on the unit. If the lender wishes, an escrow for assessments can be required.

This comment on § 3-116 illustrates the intent to allow for 6 months of assessments to be prior to a first security interest. The reason this was done was to accommodate the association's need to enforce collection of unpaid assessments. The controversy surrounding the super priority lien is in defining its limit. This is an important consideration for an association looking to enforce its lien. There is little benefit to an association if it incurs expenses pursuing unpaid assessments that will be eliminated by an imminent foreclosure of the first security interest. As stated in the comment, it is also likely that the holder of the first security interest will pay the super priority lien amount to avoid foreclosure by the association.

III. THE AMOUNT OF THE SUPER PRIORITY LIEN IS LIMITED BY THE PLAIN LANGUAGE OF NRS 116.3116(2).

NRS 116.3116(2) states:

> A lien under this section is prior to all other liens and encumbrances on a unit except:
> (a) Liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes or takes subject to;
> (b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent or, in a cooperative, the first security interest encumbering only the unit's owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent; and
> (c) Liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.
> ***The lien is also prior to all security interests described in paragraph (b) to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien***, unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien. If federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien, the period during which the lien is prior to all security interests described in paragraph (b) must be determined in accordance with those federal regulations, except that notwithstanding the provisions of the federal regulations, the period of priority for the lien must not be less than the 6 months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.

(emphasis added)

Having found previously that costs of collecting are not part of the lien means they are not part of the super priority lien. The question then becomes what can be included as part of the super priority lien. Prior to 2009, the super priority lien was limited to 6 months of assessments. In 2009, the Nevada legislature changed the 6 months of

assessments to 9 months and added expenses for abatement under NRS 116.310312 to the super priority lien amount. But to the extent federal law applicable to the first security interest limits the super priority lien, the super priority lien is limited to 6 months of assessments.

The emphasized language in the portion of the statute above identifies the portion of the association's lien that is prior to the first security interest, i.e. what comprises the super priority lien. This language states that there are two components to the super priority lien. The first is "to the extent of any charges" incurred by the association pursuant to NRS 116.310312. NRS 116.310312(4) makes clear that the charges assessed against the unit pursuant to this section are a lien on the unit and subsection (6) makes it clear that such lien is prior to first security interests. These costs are also specifically part of the lien described in NRS 116.3116(1) incorporated through NRS 116.3102(1)(j). This portion of the super priority lien is specific to charges incurred pursuant to NRS 116.310312. Payment of those charges relieves their super priority lien status. There does not seem to be any confusion as to what this part of the super priority lien is. Analysis of the super priority lien will focus on the second portion.

A. THE SUPER PRIORITY LIEN ATTRIBUTABLE TO ASSESSMENTS IS LIMITED TO 9 MONTHS OF ASSESSMENTS AND CONSISTS ONLY OF ASSESSMENTS.

The second portion of the super priority lien is "to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien."

The statute uses the language "to the extent of the assessments" to illustrate that there is a limit on the amount of the super priority lien, just like the language concerning expenses pursuant to NRS 116.310312, but this portion concerns assessments. The limit on the super priority lien is based on the assessments for

common expenses reflected in a budget adopted pursuant to NRS 116.3115 which would have become due in 9 months. The assessment portion of the super priority lien is no different than the portion derived from NRS 116.310312. Each portion of the super priority lien is limited to the specific charge stated and nothing else.

Therefore, while the association's *lien* may include any penalties, fees, charges, late charges, fines and interest charged pursuant to NRS 116.3102 (1) (j) to (n), inclusive, the total amount of the *super priority lien* attributed to assessments is no more than 9 months of the monthly assessment reflected in the association's budget. Association budgets do not reflect late charges or interest attributed to an anticipated delinquent owner, so there is no basis to conclude that such charges could be included in the super priority lien or in addition to the assessments. Such extraneous charges are not included in the association's super priority lien.

NRS 116.3116 originally provided for 6 months of assessments as the super priority lien. Comments to the Uniform Act quoted previously support the conclusion that the original intent was for 6 months of the assessments alone to comprise the super priority lien amount and not the penalties, charges, or interest. It is possible that an argument could be made that the language is so clear in this regard one should not look to legislative intent. But considering the controversy surrounding the meaning of this statute, the better argument is that legislative intent should be used to determine the meaning.

The Commission's advisory opinion of December 2010 concluded that assessments *and* additional costs are part of the super priority lien. The Commission's advisory opinion relies in part on a Wake Forest Law Review[8] article from 1992 discussing the Uniform Act. This article actually concludes that the Uniform Act language limits the

[8] See James Winokur, *Meaner Lienor Community Associations: The "Super Priority" Lien and Related Reforms Under the Uniform Common Interest Ownership Act*, 27 WAKE FOREST L. REV. 353, 366-69 (1992).

amount of the super priority lien to 6 months of assessments, but that the super priority lien does not necessarily consist of only delinquent assessments.[9] It can include fines, interest, and late charges.[10] The concept here is that all parts of the lien are prior to a first security interest and that reference to assessments for the super priority lien is only to define a specific dollar amount.

The Division disagrees with this interpretation because of the unreasonable consequences it leaves open. For example, a unit owner may pay the delinquent assessment amount leaving late charges and interest as part of the super priority lien. If the super priority lien can encompass more than just delinquent assessments in this situation, it would give the association the right to foreclose its lien consisting only of late charges and interest prior to the first security interest. It is also unreasonable to expect that fines (which cannot be foreclosed generally) survive a foreclosure of the first security interest. Either the lender or the new buyer would be forced to pay the prior owner's fines. The Division does not find that these consequences are reasonable or intended by the drafters of the Uniform Act or by the Nevada Legislature. Even the 2008 revisions to the Uniform Act do not allow for anything other than assessments and costs incurred to foreclose the lien to be included in the super priority lien. Fines, interest, and late charges are not *costs* the association incurs.

In 2009, the Nevada Legislature revised NRS 116.3116 to expand the association's super priority lien. Assembly Bill 204 sought to extend the super priority lien of 6 months of assessments to 2 years of assessments.[11] The Commission's chairman, Michael Buckley, testified on March 6, 2009 before the Assembly Committee on Judiciary on A.B. 204 that the law was unclear as to whether the 6 month priority can

---

[9] See id. at 367 (referring to the super priority lien as the "six months assessment ceiling" being computed from the periodic budget).
[10] See id.
[11] See http://leg.state.nv.us/Session/75th2009/Reports/history.cfm?ID=416.

include the association's costs and attorneys' fees.[12] Mr. Buckley explained that the Uniform Act amendments in 2008 allowed for the collection of attorneys' fees and costs incurred by the association in foreclosing the assessment lien as part of the super priority lien. Mr. Buckley requested that the 2008 change to the Uniform Act be included in A.B. 204. Mr. Buckley's requested change to A.B. 204 to expand the super priority lien never made it into A.B. 204. Ultimately, A.B. 204 was adopted to change 6 months to 9 months, but commenting on the intent of the bill, Assemblywoman Ellen Spiegel stated:

> Assessments covered under A.B. 204 are the regular monthly or quarterly dues for their home. *I carefully put this bill together to make sure it did not include any assessments for penalties, fines or late fees.* The bill covers the basic monies the association uses to build its regular budgets.

(emphasis added).[13]

It is significant that the legislative intent in changing 6 months to 9 months was with the understanding that no portion of that amount would be for penalties, fines, or late fees and that it only covers the basic monies associations use to build their regular budgets. It does make sense that a lien superior to a first security interest would not include penalties, fines, and interest. To say that the super priority lien includes more than just 9 months of assessments allows several undesirable and unreasonable consequences.

B. NEVADA HAS NOT ADOPTED AMENDMENTS TO THE UNIFORM ACT TO ALTER THE ORIGINAL INTENT OF THE SUPER PRIORITY LIEN.

The changes to the Uniform Act support the contention that only what is referenced as the super priority lien in NRS 116.3116(2) is what comprises the super priority lien. In 2008, § 3-116 of the Uniform Act was revised as follows:

---

[12] See Minutes of the Meeting of the Assembly Committee on Judiciary, Seventy-fifth Session, March 6, 2009 at 44-45.

[13] See Minutes of the Senate Committee on Judiciary, Seventy-fifth Session, May 8, 2009 at 27.

SECTION 3-116. LIEN FOR ~~ASSESSMENTS~~; SUMS DUE ASSOCIATION; ENFORCEMENT.

(a) The association has a statutory lien on a unit for any assessment ~~levied against~~ attributable to that unit or fines imposed against its unit owner. Unless the declaration otherwise provides, reasonable attorney's fees and costs, other fees, charges, late charges, fines, and interest charged pursuant to Section 3-102(a)(10), (11), and (12), and any other sums due to the association under the declaration, this [act], or as a result of an administrative, arbitration, mediation, or judicial decision are enforceable in the same manner as unpaid assessments under this section. If an assessment is payable in installments, the lien is for the full amount of the assessment from the time the first installment thereof becomes due.

(b) A lien under this section is prior to all other liens and encumbrances on a unit except:

~~(i)~~(1) liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances ~~which~~ that the association creates, assumes, or takes subject to~~,~~ ;

~~(ii)~~(2) except as otherwise provided in subsection (c), a first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent, or, in a cooperative, the first security interest encumbering only the unit owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent~~,~~; and

~~(iii)~~(3) liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.

(c) A ~~The~~ lien under this section is also prior to all security interests described in subsection (b)(2) ~~clause (ii) above~~ to the extent of both the common expense assessments based on the periodic budget adopted by the association pursuant to Section 3-115(a) which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien and reasonable attorney's fees and costs incurred by the association in foreclosing the association's lien. ~~This subsection~~ Subsection (b) and this subsection ~~does~~ do not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association. [~~The~~ A lien under this section is not subject to ~~the provisions of~~ [insert appropriate reference to state homestead, dower and curtesy, or other exemptions].]

Explaining the reason for the changes to these sections, the Uniform Act includes the following comments:

Ex. 5

Electronically Filed
06/03/2011 10:04:45 AM

CLERK OF THE COURT

ORD

JAMES R. ADAMS, ESQ.
Nevada Bar No. 6874
ASSLY SAYYAR, ESQ.
Nevada Bar No. 9178
ADAMS LAW GROUP, LTD.
8681 W. Sahara Ave., Suite 280
Las Vegas, Nevada 89117
Tel: 702-838-7200
Fax: 702-838-3600
james@adamslawnevada.com
assly@adamslawnevada.com
Attorneys for Plaintiffs

PUOY K. PREMSRIRUT, ESQ., INC.
Puoy K. Premsrirut, Esq.
Nevada Bar No. 7141
520 S. Fourth Street, 2nd Floor
Las Vegas, NV 89101
(702) 384-5563
(702)-385-1752 Fax
ppremsrirut@brownlawlv.com
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

WINGBROOK CAPITAL, LLC., Plaintiff, vs. PEPPERTREE HOMEOWNERS ASSOCIATION; and DOES 1-10 and ROE ENTITIES 1-10, INCLUSIVE Defendants.	Case No. A-11-636948-B Dept. No. XI **ORDER**

This matter came before the Court on May 24, 2011 at 9:00 a.m., upon the Plaintiff's Motion for Summary Judgment on Claim of Declaratory Relief. James R. Adams, Esq., of Adams Law Group, Ltd., and Puoy K. Premsrirut, Esq., of Puoy K. Premsrirut, Esq., Inc., appeared on behalf of the Plaintiff. Kurt Bonds, Esq., of Alverson, Taylor, Mortensen & Sanders appeared on behalf of the Defendant. The Honorable Court, having read the briefs on file and having heard oral argument, and for good cause appearing hereby rules:

WHEREAS the Parties have engaged in and have concluded a Nevada Real Estate Division mediation (ADR #11-25) wherein the Parties mediated a dispute over the sum of $13,190.33; and

WHEREAS the subject of the mediation was whether NRS 116.3116 permitted Defendant to charge to Plaintiff $14,037.83, or whether some lesser amount was due pursuant to NRS 116.3116; and

WHEREAS, the Court has determined that a justiciable controversy exists in this matter as Defendant claims it has a right pursuant to NRS 116.3116 to charge and retain proceeds in the amount $14,037.83 from Plaintiff and Plaintiff, a purchaser of a home at foreclosure which is located within the Defendant homeowners' association, contests this charge and claims that Defendant exceeded the limits of NRS 116.3116 and overcharged it for the super priority lien; and

WHEREAS there exists in this case a controversy in which a claim of right is asserted by Plaintiff against Defendant who has an interest in contesting it; and

WHEREAS Plaintiff and Defendant, the contesting parties hereto, are clearly adverse and hold different views regarding the meaning and applicability of NRS §116.3116 (including whether Defendant charged too much for the super priority lien); and

WHEREAS Plaintiff has a legal interest in the controversy as it was Plaintiff's money which had been demanded and transferred to Defendant and it was Plaintiff's property that had been the subject of a homeowners' association lien by Defendant; and

WHEREAS the issue of the meaning, application and interpretation of NRS 116.3116 is ripe for determination in this case as the present controversy is real, it exists now, and it affects the Parties hereto; and

WHEREAS, therefore, the Court finds that issuing a declaratory judgment relating to the meaning and interpretation of NRS 116.3116 would terminate some of the uncertainty and controversy giving rise to the present proceeding; and

///

///

11. The External Repair Costs portion of the Super Priority Lien shall be determined by this Court at a later date when the Court is provided with all necessary evidence to make that determination.

IT IS SO ORDERED.

DISTRICT COURT JUDGE

June 2, 2011
Date

OK

Submitted by:

JAMES R. ADAMS, ESQ.
Nevada Bar No. 6874
ASSLY SAYYAR, ESQ.
Nevada Bar No. 9178
ADAMS LAW GROUP, LTD.
8330 W. Sahara Ave., Suite 290
Las Vegas, Nevada 89117
Tel: 702-838-7200
Fax: 702-838-3600
james@adamslawnevada.com
assly@adamslawnevada.com
Attorneys for Plaintiff

PUOY K. PREMSRIRUT, ESQ., INC.
Puoy K. Premsrirut, Esq.
Nevada Bar No. 7141
520 S. Fourth Street, 2nd Floor
Las Vegas, NV 89101
(702) 384-5563
(702)-385-1752 Fax
ppremsrirut@brownlawlv.com
Attorneys for Plaintiff

Approved as to Form and Content:

MARLA DAVEE, ESQ.
Nevada Bar No. 11098
KURT BONDS, ESQ.
Nevada Bar No. 6228
Alverson, Taylor, Mortensen & Sanders
7401 West Charleston Blvd.
Las Vegas, NV 89117
Attorney for Defendant
Tel: 702-384-7000
Fax: 702-385-7000

WHEREAS, pursuant to NRS 30.040 Plaintiff and Defendant are parties whose rights, status or other legal relations are affected by NRS 116.3116 and they may, therefore, have determined by this Court any question of construction or validity arising under NRS 116.3116 and obtain a declaration of rights, status or other legal relations thereunder;

THE COURT, THEREFORE, DECLARES, ORDERS, ADJUDGES AND DECREES as follows:

1. NRS 116.3116 is a statute which creates for the benefit of Nevada homeowners' associations a lien against a homeowner's unit for any construction penalty that is imposed against the unit's owner pursuant to NRS 116.310305, any assessment levied against that unit or any fines imposed against the unit's owner from the time the construction penalty, assessment or fine becomes due (the "Statutory Lien"). The homeowners' associations' Statutory Lien is noticed and perfected by the recording of the associations' declaration and, pursuant to NRS 116.3116(4), no further recordation of any claim of lien for assessment is required.

2. Pursuant to NRS 116.3116(2), the homeowners' association's Statutory Lien is junior to a first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent ("First Security Interest") except for a portion of the homeowners' association's Statutory Lien which remains prior to the First Security Interest (the "Super Priority Lien").

3. Homeowners' associations, therefore, have a Super Priority Lien which has priority over the First Security Interest on a homeowners' unit. However, the Super Priority Lien amount is not without limits and NRS 116.3116 provides that the amount of the Super Priority Lien (i.e., that amount of a homeowners' associations' Statutory Lien which retains priority status over the First Security Interest) is limited "to the extent" of those assessments for common expenses based upon the associations' periodic budget that would have become due in the 9 month period immediately preceding an

associations' institution of an action to enforce its Statutory Lien and "to the extent of" external repair costs pursuant to NRS 116.310312.

4. The words "to the extent of" contained in NRS 116.3116(2) mean "no more than," which clearly indicates a maximum figure or a cap on the Super Priority Lien which cannot be exceeded.

5. Therefore, after the foreclosure by a First Security Interest holder of a unit located within a homeowners' association, pursuant to NRS 116.3116 the monetary limit of a homeowners' association's Super Priority Lien is limited to a maximum amount equaling 9 times the homeowners' association's monthly assessment amount to unit owners for common expenses based on the periodic budget which would have become due immediately preceding the institution of an action to enforce the lien (the "Assessment Cap Figure") plus external repair costs pursuant to NRS 116.310312.

6. While assessments, penalties, fees, charges, late charges, fines and interest may be included within the Assessment Cap Figure, in no event can the total amount of the Assessment Cap Figure exceed an amount equaling 9 times the homeowners' association's monthly assessment amount to unit owners for common expenses based on the periodic budget which would have become due immediately preceding the association's institution of an action to enforce the lien.

7. The Super Priority Lien equals the Assessment Cap Figure plus external repair costs pursuant to NRS 116.310312.

8. After providing a homeowner with notice and hearing, NRS 116.310312 permits a homeowners' association to enter the grounds of a homeowners' unit and maintain the exterior of the unit in accordance with the standards set forth in the association's governing documents. Pursuant to NRS 116.310312(2)(b), a homeowners' association may also remove or abate a public nuisance on the exterior of a unit. The association may order that the costs of such maintenance or abatement, including interest, inspection fees, notification fees and collection costs for such maintenance

or abatement to be charged against the unit ("Exterior Repair Costs"). NRS 116.310312(9)(a) provides that "Exterior" of the unit includes, without limitation, all landscaping outside of a unit and the exterior of all property exclusively owned by the unit owner.

9. Therefore, the Super Priority Lien consists solely and exclusively of the Assessment Cap Figure and the Exterior Repair Costs. No other costs, fees, fines, penalties, assessments, charges, late charges, or interest or any other costs may be included within the Super Priority Lien.

10. Pursuant to NRS 116.3116, the maximum amount of the Assessment Cap Figure portion of Defendant's Super Priority Lien cannot exceed $1,552.50 which equals 9 times the Defendant's monthly assessments. As Defendant has assessed against Plaintiff $1,552.50 for past due assessments incurred prior to Plaintiff's ownership of the property, the additional late fees of $135.00 and accrued interest on the Assessment Cap Figure are impermissible and cannot be included in the Assessment Cap Figure as the addition of those costs exceed the Assessment Cap Figure of $1,552.50 and violates NRS 116.3116.

///

///

///

///

///

///

///

///

Ex. 6

NEOJ
ADAMS LAW GROUP, LTD.
JAMES R. ADAMS, ESQ.
Nevada Bar No. 6874
ASSLY SAYYAR, ESQ.
Nevada Bar No. 9178
8010 W Sahara Avenue Suite 260
Las Vegas, Nevada 89117
(702) 838-7200
(702) 838-3636 Fax
james@adamslawgroup.com
assly@adamslawgroup.com
Attorneys for Plaintiff

PUOY K. PREMSRIRUT, ESQ., INC.
Puoy K. Premsrirut, Esq.
Nevada Bar No. 7141
520 S. Fourth Street, 2nd Floor
Las Vegas, NV 89101
(702) 384-5563
(702)-385-1752 Fax
ppremsrirut@brownlawlv.com
Attorneys for Plaintiff

ADAMS LAW GROUP, LTD.
8681 W. SAHARA AVENUE, SUITE 280
LAS VEGAS, NEVADA 89117
TELEPHONE (702) 838-7200
FACSIMILE (702) 838-3636

DISTRICT COURT
CLARK COUNTY, NEVADA

IKON HOLDINGS, LLC, a Nevada limited liability company,

Plaintiff,

vs.

HORIZONS AT SEVEN HILLS HOMEOWNERS ASSOCIATION, and DOES 1 through 10 and ROE ENTITIES 1 through 10 inclusive,

Defendant.

Case No. A-11-647850-C
Dept No. 13

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on the 1st day, January2012, the attached Order was entered in the above referenced matter.

Dated this 20th day of January, 2012.

ADAMS LAW GROUP, LTD
JAMES R. ADAMS, ESQ.
Nevada Bar No. 6874
ASSLY SAYYAR, ESQ.
Nevada Bar No. 9178
8010 W Sahara Ave. Ste. 260
Las Vegas, NV 89117

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Adams Law Group, Ltd., and that on this date, I served the following **NOTICE OF ENTRY OF ORDER** upon all parties to this action by:

X	Placing an original or true copy thereof in a sealed enveloped place for collection and mailing in the United States Mail, at Las Vegas, Nevada, postage paid, following the ordinary business practices;
	Hand Delivery
	Facsimile
	Overnight Delivery
	Certified Mail, Return Receipt Requested.

addressed as follows:

Eric Hinckley, Esq.
Alverson Taylor
Mortensen and Sanders
7401 W Charleston Blvd.
Las Vegas, NV 89117-1401

Dated the 20th day of January, 2012.

An employee of Adams Law Group, Ltd.

ADAMS LAW GROUP, LTD.
8681 W. SAHARA AVENUE, SUITE 280
LAS VEGAS, NEVADA 89117
TELEPHONE (702) 838-7200
FACSIMILE (702) 838-3636

Electronically Filed
01/19/2012 03:08:18 PM

CLERK OF THE COURT

ORD
ADAMS LAW GROUP, LTD.
JAMES R. ADAMS, ESQ.
Nevada Bar No. 6874
ASSLY SAYYAR, ESQ.
Nevada Bar No. 9178
8330 W. Sahara Ave. Suite 290
Las Vegas, Nevada 89117
(702) 838-7200
(702) 838-3636 Fax
james@adamslawnevada.com
assly@adamslawnevada.com
Attorneys for Plaintiff

PUOY K. PREMSRIRUT, ESQ., INC.
Puoy K. Premsrirut, Esq.
Nevada Bar No. 7141
520 S. Fourth Street, 2nd Floor
Las Vegas, NV 89101
(702) 384-5563
(702)-385-1752 Fax
ppremsrirut@brownlawlv.com
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

IKON HOLDINGS, LLC, a Nevada limited liability company, Plaintiff, vs. HORIZONS AT SEVEN HILLS HOMEOWNERS ASSOCIATION, and DOES 1 through 10 and ROE ENTITIES 1 through 10 inclusive, Defendant.	Case No: A-11-647850-C Dept: No. 13 ORDER

This matter came before the Court on December 12, 2011 at 9:00 a.m., upon the Plaintiff's Motion for Summary Judgment on Claim of Declaratory Relief and Defendant's Counter Motion for Summary Judgment on Claim of Declaratory Relief. James R. Adams, Esq., of Adams Law Group, Ltd., and Puoy K. Premsrirut, Esq., of Puoy K. Premsrirut, Esq., Inc., appeared on behalf of the Plaintiff. Eric Hinckley, Esq., of Alverson, Taylor, Mortensen & Sanders appeared on behalf of the Defendant. The Honorable Court, having read the briefs on file and having heard oral argument, and for good cause appearing hereby rules:

WHEREAS, the Court has determined that a justiciable controversy exists in this matter as Plaintiff has asserted a claim of right under NRS §116.3116 (the "Super Priority Lien" statute) against Defendant and Defendant has an interest in contesting said claim, the present controversy is between persons or entities whose interests are adverse, both parties seeking declaratory relief have a legal interest in the controversy (i.e., a legally protectible interest), and the issue involved in the controversy (the meaning of NRS 116.3116) is ripe for judicial determination as between the parties. *Kress v. Corey 65 Nev. 1, 189 P.2d 352 (1948);* and

WHEREAS Plaintiff and Defendant, the contesting parties hereto, are clearly adverse and hold different views regarding the meaning and applicability of NRS §116.3116 (including whether Defendant demanded from Plaintiff amounts in excess of that which is permitted under the NRS §116.3116); and

WHEREAS Plaintiff has a legal interest in the controversy as it was Plaintiff's money which had been demanded by Defendant and it was Plaintiff's property that had been the subject of a homeowners' association statutory lien by Defendant; and

WHEREAS the issue of the meaning, application and interpretation of NRS §116.3116 is ripe for determination in this case as the present controversy is real, it exists now, and it affects the parties hereto; and

WHEREAS, therefore, the Court finds that issuing a declaratory judgment relating to the meaning and interpretation of NRS §116.3116 would terminate some of the uncertainty and controversy giving rise to the present proceeding; and

WHEREAS, pursuant to NRS §30.040 Plaintiff and Defendant are parties whose rights, status or other legal relations are affected by NRS §116.3116 and they may, therefore, have determined by this Court any question of construction or validity arising under NRS §116.3116 and obtain a declaration of rights, status or other legal relations thereunder; and

WHEREAS, the Court is persuaded that Plaintiff's position is correct relative to the components of the Super Priority Lien (exterior repair costs and 9 months of regular assessments) and the cap relative to the regular assessments, but it is not persuaded relative to Plaintiff's position

concerning the need for a civil action to trigger a homeowners' association's entitlement to the Super Priority Lien.

THE COURT, THEREFORE, DECLARES, ORDERS, ADJUDGES AND DECREES as follows:

1. Plaintiff's Motion for Partial Summary Judgment on Declaratory Relief is granted in part and Defendant's Motion for Summary Judgment on Declaratory Relief is granted in part.

2. NRS §116.3116 is a statute which creates for the benefit of Nevada homeowners' associations a general statutory lien against a homeowner's unit for (a) any construction penalty that is imposed against the unit's owner pursuant to NRS §116.310305, (b) any assessment levied against that unit, and (c) any fines imposed against the unit's owner from the time the construction penalty, assessment or fine becomes due (the "General Statutory Lien"). The homeowners' associations' General Statutory Lien is noticed and perfected by the recording of the associations' declaration and, pursuant to NRS §116.3116(4), no further recordation of any claim of lien for assessment is required.

3. Pursuant to NRS §116.3116(2), the homeowners' association's General Statutory Lien is junior to a first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent ("First Security Interest") except for a portion of the homeowners' association's General Statutory Lien which remains superior to the First Security Interest (the "Super Priority Lien").

4. Unless an association's declaration otherwise provides, any penalties, fees, charges, late charges, fines and interest charged pursuant to NRS 116.3102(1)(j) to (n), inclusive, are enforceable in the same manner as assessments are enforceable under NRS §116.3116. Thus, while such penalties, fees, charges, late charges, fines and interest are not actual "assessments," they may be enforced in the same manner as

assessments are enforced, i.e., by inclusion in the association's General Statutory Lien against the unit.

5. Homeowners' associations, therefore, have a Super Priority Lien which has priority over the First Security Interest on a homeowners' unit. However, the Super Priority Lien amount is not without limits and NRS §116.3116 is clear that the amount of the Super Priority Lien (which is that portion of a homeowners' associations' General Statutory Lien which retains priority status over the First Security Interest) is limited "to the extent" of those assessments for common expenses based upon the association's adopted periodic budget that would have become due in the 9 month period immediately preceding an association's institution of an action to enforce its General Statutory Lien (which is 9 months of regular assessments) and "to the extent of" external repair costs pursuant to NRS §116.310312.

6. The base assessment figure used in the calculation of the Super Priority Lien is the unit's un-accelerated, monthly assessment figure for association common expenses which is wholly determined by the homeowners association's "periodic budget," as adopted by the association, and not determined by any other document or statute. Thus, the phrase contained in NRS §116.3116(2) which states, "... to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien..." means a maximum figure equaling 9 times the association's regular, monthly (not annual) assessments. If assessments are paid quarterly, then 3 quarters of assessments (i.e., 9 months) would equal the Super Priority Lien, plus external repair costs pursuant to NRS §116.310312.

7. The words "to the extent of" contained in NRS §116.3116(2) mean "no more than," which clearly indicates a maximum figure or a cap on the Super Priority Lien which cannot be exceeded.

8. Thus, while assessments, penalties, fees, charges, late charges, fines and interest may be included within the Super Priority Lien, in no event can the total amount of the Super Priority Lien exceed an amount equaling 9 times the homeowners' association's regular monthly assessment amount to unit owners for common expenses based on the periodic budget which would have become due immediately preceding the association's institution of an action to enforce the lien, plus external repair costs pursuant to NRS 116.310312.

9. Further, if regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien (i.e., shorter than 9 months of regular assessments,) the shorter period shall be used in the calculation of the Super Priority Lien, except that notwithstanding the provisions of the regulations, that shorter period used in the calculation of the Super Priority Lien must not be less than the 6 months immediately preceding institution of an action to enforce the lien.

10. Moreover, ~~the Super Priority Lien can exist only if an "action" is instituted by the association to enforce its General Statutory Lien. The term "action" as used in NRS §116.3116(2) (as opposed the term "action" as contained in NRS §116.3116(7)), does not mean a "civil action" as that phrase is defined in NRCP 2 and NRCP 3 (i.e., "action" as used in NRS §116.3116(2) does not mean the filing of a complaint with the court).~~ the need for the institution of an actual civil action in order to enforce the Super Priority Lien can be obviated if the issue is otherwise properly raised in the court, as is the situation here where foreclosure in effect constitute an action within the meaning of NRS 116.3116(2)(c).

IT IS SO ORDERED.

1/12/12

DISTRICT COURT JUDGE Date

Submitted by:

JAMES R. ADAMS, ESQ.
Nevada Bar No. 6874
ASSLY SAYYAR, ESQ.

Nevada Bar No. 9178
ADAMS LAW GROUP, LTD.
8330 W. Sahara Ave., Suite 290
Las Vegas, Nevada 89117
Tel: 702-838-7200
Fax: 702-838-3600
james@adamslawnevada.com
assly@adamslawnevada.com
Attorneys for Plaintiff

PUOY K. PREMSRIRUT, ESQ., INC.
Puoy K. Premsrirut, Esq.
Nevada Bar No. 7141
520 S. Fourth Street, 2nd Floor
Las Vegas, NV 89101
(702) 384-5563
(702)-385-1752 Fax
ppremsrirut@brownlawlv.com
Attorneys for Plaintiff

Approved:

NOT APPROVED

Eric Hinckley, Esq.
Alverson Taylor Mortensen and Sanders
7401 W. Charleston Blvd.
Las Vegas, NV 89117-1401
Office: 702.384.7000
Fax: 702.385.7000
Ehinckley@AlversonTaylor.com
Attorney for Defendant

Ex. 7

Electronically Filed
09/25/2012 11:12:34 AM

CLERK OF THE COURT

ORDR
JAMES R. ADAMS, ESQ.
Nevada Bar No. 6874
ADAMS LAW GROUP, LTD.
8010 W. Sahara Ave., Suite 260
Las Vegas, Nevada 89117
Tel: 702-838-7200
Fax: 702-838-3600
james@adamslawnevada.com
Attorneys for Plaintiff and the Class

DISTRICT COURT

CLARK COUNTY, NEVADA

PREM DEFERRED TRUST, on behalf of itself and as representatives of the class herein defined Plaintiff, vs. ALIANTE MASTER ASSOCIATION, and DOES 1 through 10 and ROE ENTITIES 1 through 10 inclusive, Defendant.	CASE NO. A-11-651107-B DEPT. NO 29 **ORDER**

This matter came before the Court on 07/24/2012, at 10:00 a.m., on Plaintiff and the Class' MOTION FOR SUMMARY JUDGMENT ON DECLARATORY RELIEF and Defendant Aliante Master Association's OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ON CLAIM FOR DECLARATORY RELIEF AND COUNTER-MOTION FOR SUMMARY JUDGMENT. James R. Adams, Esq., of Adams Law Group, Ltd., appeared on behalf of the Plaintiff and the Class. Kurt Bonds, Esq., of Alverson, Taylor, Mortensen & Sanders appeared on behalf of the Defendant. Patrick Reilly, Esq., of Holland and Hart appeared on behalf of Nevada Association Services, Inc., and RMI Management, Inc., as Amici Curiae of the Court.

After review and consideration of all the pleadings and briefs of Plaintiff, Defendant and the Amici Curiae, including all exhibits attached thereto, and including the oral arguments of Counsel for Plaintiff and the Class, Counsel for Defendant and Counsel for the Amici Curiae, the Honorable Court hereby rules:

42905

ORDR

JAMES R. ADAMS, ESQ.
Nevada Bar No. 6874
ADAMS LAW GROUP, LTD.
8010 W. Sahara Ave., Suite 260
Las Vegas, Nevada 89117
Tel: 702-838-7200
Fax: 702-838-3600
james@adamslawnevada.com
Attorneys for Plaintiff and the Class

DISTRICT COURT

CLARK COUNTY, NEVADA

PREM DEFERRED TRUST, on behalf of itself and as representatives of the class herein defined Plaintiff, vs. ALIANTE MASTER ASSOCIATION, and DOES 1 through 10 and ROE ENTITIES 1 through 10 inclusive, Defendant.	CASE NO. A-11-651107-B DEPT. NO 29 **ORDER**

This matter came before the Court on 07/24/2012, at 10:00 a.m., on Plaintiff and the Class' MOTION FOR SUMMARY JUDGMENT ON DECLARATORY RELIEF and Defendant Aliante Master Association's OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ON CLAIM FOR DECLARATORY RELIEF AND COUNTER-MOTION FOR SUMMARY JUDGMENT. James R. Adams, Esq., of Adams Law Group, Ltd., appeared on behalf of the Plaintiff and the Class. Kurt Bonds, Esq., of Alverson, Taylor, Mortensen & Sanders appeared on behalf of the Defendant. Patrick Reilly, Esq., of Holland and Hart appeared on behalf of Nevada Association Services, Inc., and RMI Management, Inc., as Amici Curiae of the Court.

After review and consideration of all the pleadings and briefs of Plaintiff, Defendant and the Amici Curiae, including all exhibits attached thereto, and including the oral arguments of Counsel for Plaintiff and the Class, Counsel for Defendant and Counsel for the Amici Curiae, the Honorable Court hereby rules:

42905

WHEREAS, the Court has determined that a justiciable controversy exists in this matter as Plaintiff and the Class have asserted a claim of right under NRS §116.3116(2) (the "Super Priority Lien" statute) against Defendant and Defendant has an interest in contesting said claim. The issue contained in the briefing is, therefore, ripe for determination. Further, the present controversy is between persons or entities whose interests are adverse and who have a legal interest in the controversy (*Kress v. Corey* 65 Nev. 1, 189 P.2d 352 (1948)); and

WHEREAS Plaintiff, the Class and the Defendant, the contesting parties hereto, are clearly adverse and hold different views regarding the meaning and applicability of NRS §116.3116; and

WHEREAS Plaintiff and the Class, and the Defendant have a legal interest in the controversy as it is Plaintiff's and the Class' property that is the subject of Defendant's Super Priority Lien and all parties, therefore, have a legal interest in a determination of to what extent the Super Priority Lien can exist; and

WHEREAS the issue of the meaning, application and interpretation of NRS §116.3116 is ripe for determination in this case as the present controversy is real, it exists now, and it affects the parties hereto; and

WHEREAS, therefore, the Court finds that issuing a declaratory judgment relating to the meaning and interpretation of NRS §116.3116 would terminate some of the uncertainty and controversy giving rise to the present proceeding; and

WHEREAS, pursuant to NRS §30.040 Plaintiff, the Class and the Defendant are parties whose rights, status or other legal relations are affected by NRS §116.3116 and they may, therefore, have determined by this Court any question of construction or validity arising under NRS §116.3116 and obtain a declaration of rights, status or other legal relations thereunder.

THE COURT, THEREFORE, DECLARES, ORDERS, ADJUDGES AND DECREES as follows:

1. Plaintiff's and the Class' MOTION FOR SUMMARY JUDGMENT ON CLAIM OF DECLARATORY RELIEF is granted.
2. Defendant's COUNTER-MOTION FOR SUMMARY JUDGMENT is denied.

3. NRS §116.3116(1) is a statute which creates for the benefit of Nevada homeowners' associations a statutory lien against a homeowner's unit for (a) any construction penalty that is imposed against the unit's owner pursuant to NRS §116.310305, (b) any assessment levied against that unit, and (c) any fines imposed against the unit's owner from the time the construction penalty, assessment or fine becomes due (the "General Statutory Lien").

4. Pursuant to NRS §116.3116(2), the homeowners' association's General Statutory Lien is junior to a first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent ("First Security Interest") except for a portion of the homeowners' association's General Statutory Lien which remains superior to the First Security Interest (the "Super Priority Lien").

5. Defendant, as a Nevada homeowners' association, therefore, has a Super Priority Lien which has payment priority over the First Security Interest on a homeowners' unit. However, the Super Priority Lien amount is not without limits and NRS §116.3116(2) is clear that the amount of the Super Priority Lien (that portion of the General Statutory Lien which retains a priority payment status over the First Security Interest) is limited "to the extent" of a homeowners' association's assessments for common expenses based upon the association's periodic budget that would have become due, in the absence of acceleration, in the 9 month period immediately preceding Defendant's institution of an action to enforce its General Statutory Lien (which is 9 months of regular, common assessments) and "to the extent of" external repair costs pursuant to NRS §116.310312 unless regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien.

6. The base assessment figure used in the calculation of the Super Priority Lien is the unit's un-accelerated, monthly assessment figure for association common expenses which is wholly determined by the homeowners association's "periodic budget," as adopted by the association, and not determined by any other document or statute. Thus, the phrase contained in NRS §116.3116(2) which states, "... to the extent of the assessments for common expenses

based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien..." means a maximum figure equaling 9 months of an association's regular, monthly (not annual) assessments. If assessments are paid quarterly, then 3 quarters of assessments (i.e., 9 months) would equal the Super Priority Lien, plus external repair costs pursuant to NRS §116.310312.

7. The words "to the extent of" contained in NRS §116.3116(2) mean "no more than," which clearly indicates a maximum figure or a cap on the Super Priority Lien which cannot be exceeded.

8. Thus, while assessments, penalties, fees, charges, late charges, fines and interest may be included within the Super Priority Lien, in no event can the total amount of the Super Priority Lien exceed an amount equaling 9 months of the Defendant's regular monthly assessment amount to unit owners for common expenses based on the periodic budget which would have become due immediately preceding the association's institution of an action to enforce the lien, plus external repair costs pursuant to NRS 116.310312.

9. In addition to the arguments of counsel contained in the briefs on file, in rendering this decision, the Court considered all exhibits appended to such all briefs, including but not limited to law review articles, the legislative history of NRS 116.3116, the history of the Uniform Common Interest Ownership Act, intermediate appellate and supreme court case law of other states, and the Commission on Common-Interest Communities & Condominium Hotels' Advisory Opinion which opined that a homeowners' association may collect as a part of the Super Priority Lien interest, late fees or charges, and the costs of collecting, but did not directly opine upon the issue of whether there was a maximum limit to the Super Priority Lien regardless of the constituent elements thereof, which was the question before this Court.

10. While the Court considered all such supporting materials, the Court is bound by the precedent of the Nevada Supreme Court which directs trial courts that, "[W]here a statute is clear on its face, a court may not go beyond the language of the statute in determining the

legislature's intent." *Diaz v. Eighth Judicial Dist. Court ex rel. County of Clark*, 116 Nev. 88, 94, 993 P.2d 50 (2000).

11. The Court finds that NRS 116.3116 is clear on its face. After the foreclosure by a first security interest on a unit recorded before the date on which the assessment sought to be enforced became delinquent, a portion of a homeowners' association's statutory lien under NRS 116.3116(1) is prior to the first security interest only to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 (exterior repair costs) and only to the extent of the assessments for common expenses which are based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien, unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien. The 9 month figure is derived by taking the monthly assessment figure for common expenses as contained in the association's periodic budget which existed immediately prior to the association's institution of an action to enforce its lien, and multiplying by 9.

12. Prior to the October 1, 2009, amendment increasing the Super Priority Lien, the maximum amount of the Super Priority Lien was limited to the extent of the assessments for common expenses which are based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 6 months immediately preceding institution of an action to enforce the lien, unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien.

IT IS SO ORDERED.

DISTRICT COURT JUDGE Sept. 24, 2012 Date

Submitted by:

JAMES R. ADAMS, ESQ.
Nevada Bar No. 6874
ADAMS LAW GROUP, LTD.
8010 W. Sahara Ave., Suite 260
Las Vegas, Nevada 89117
Tel: 702-838-7200
Fax: 702-838-3600
james@adamslawnevada.com
Attorneys for Plaintiffs

Not Approved

ERIC HINCKLEY, ESQ.
Alverson Taylor Mortensen and Sanders
7401 W. Charleston Blvd.
Las Vegas, NV 89117-1401
Office: 702.384.7000
Fax: 702.385.7000
Attorneys for Defendant

Ex. 8

Electronically Filed
06/06/2011 12:26:57 PM

CLERK OF THE COURT

NEO
ANGIUS & TERRY LLP
PAUL P. TERRY, JR., ESQ.
Nevada Bar No. 7192
WILLIAM PAUL WRIGHT, ESQ.
Nevada Bar No. 7564
TROY R. DICKERSON, ESQ.
Nevada Bar No. 9381
1120 N. Town Center Drive, Suite 260
Las Vegas, NV 89144
Telephone: (702) 990-2017
Facsimile: (702) 990-2018
tdickerson@angius-terry.com
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

ELKHORN COMMUNITY ASSOCIATION, a Nevada Non-Profit Corporation,

Plaintiff,

v.

DANIEL VALENZUELA, an Individual; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS"), AS NOMINEE FOR MYLOR FINANCIAL, a Mississippi Corporation; MYLOR FINANCIAL, a Mississippi Corporation; SONEPCO FEDERAL CREDIT UNION, a Corporation; CATARINO GUTIERREZ, an Individual; MARIA GUTIERREZ, an Individual; JUANITA GUTIERREZ, an Individual; and DOES I through X, inclusive,

Defendants.

CASE NO.: A-10-607051-C

DEPT NO.: II

NOTICE OF ENTRY OF ORDER

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that an **ORDER GRANTING MOTION FOR DECLARATORY RELIEF** was entered in the above-referenced matter on June 1, 2011, a copy which is attached hereto with its accompanying Stipulation.

DATED this 6th day of June, 2011.

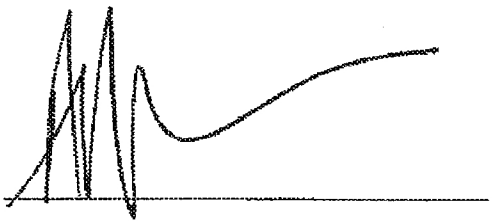
ANGIUS & TERRY LLP

By: _____
PAUL P. TERRY, JR. (NVB 7192)
WILLIAM PAUL WRIGHT (NVB 7564)
TROY R. DICKERSON (NVB 9381)
1120 N. Town Center Dr., Suite 260
Las Vegas, NV 89144
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of June 2011, I served a true and correct copy of the foregoing a **NOTICE OF ENTRY OF ORDER GRANTING MOTION FOR DECLARATORY RELIEF** by placing the same in the U.S. Mail, addressed as follows:

Mortgage Electronic Systems ("MERS")
c/o Christina S. Bhirud, Esq.
Akerman Senterfitt LLP
400 South Fourth Street, Suite 450
Las Vegas, NV 89101



An Employee of ANGIUS & TERRY LLP

ANGIUS & TERRY LLP
120 N. Town Center Dr
Suite 260
Las Vegas, NV 89144
(702) 990-2017

Electronically Filed
06/01/2011 01:34:42 PM

CLERK OF THE COURT

ORDR
Paul P. Terry, Jr. (NBN 7192)
William Paul Wright (NBN 7564)
Troy R. Dickerson (NBN 9381)
ANGIUS & TERRY LLP
1120 N. Town Center Drive, Suite 260
Las Vegas, NV 89144
Telephone: (702) 990-2017
Facsimile: (702) 990-2018
tdickerson@angius-terry.com
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

ELKHORN COMMUNITY ASSOCIATION, a Nevada Non-Profit Corporation,

Plaintiff,

v.

DANIEL VALENZUELA, an Individual; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS"), AS NOMINEE FOR MYLOR FINANCIAL, a Mississippi Corporation; MYLOR FINANCIAL, a Mississippi Corporation; SONEPCO FEDERAL CREDIT UNION, a Corporation; CATARINO GUTIERREZ, an Individual; MARIA GUTIERREZ, an Individual; JUANITA GUTIERREZ, an Individual; and DOES 1 through X, inclusive,

Defendants.

CASE NO.: A-10-607051-C

DEPT NO.: II

ORDER GRANTING MOTION FOR DECLARATORY RELIEF

Plaintiff Elkhorn Community Association's ("Plaintiff" or "Association") Motion for Declaratory Relief came on for hearing on February 16, 2011, in Department 2 before the

Honorable Valorie J. Vega, Judge, presiding. The motion was heard on the Court's chambers calendar.

The matter was originally calendared for hearing on the Court's chambers calendar on January 5, 2011. On December 30, 2010, the Court received a motion from counsel for Defendant Mortgage Electronic Registration Systems, Inc. ("Defendant"), requesting permission to file a Sur-Reply to Plaintiff's original Reply on the grounds that Plaintiff's Reply raised new issues. The Court granted Defendant's motion, continued the hearing on this matter until January 26, 2011, and ordered Defendant's Sur-Reply to be filed by January 19, 2011. No Sur-Reply was filed by the January 19, 2011 deadline. The Court then received a Motion to Extend Time to File Sur-Reply from Defendant's counsel, claiming that he had never received the Court's Order granting Defendant permission to file a Sur-Reply, and requesting an extension to file. The Court granted the relief requested and continued the hearing to February 16, 2011 on the Court's chambers calendar.[1]

The Court now issues the following ORDER GRANTING PLAINTIFF'S MOTION FOR DECLARATORY RELIEF:

Question No. 1: Does the Association have the right to bring a judicial foreclosure action before a court of proper jurisdiction in Nevada to satisfy the Association's special priority portion of a lien for assessments authorized by NRS 116.3116 ("SPL")?

Answer to Question No. 1: Yes. The Court finds that the Association has the right to bring a judicial foreclosure action before a court of proper jurisdiction in Nevada to satisfy the SPL pursuant to NRS Chapters 40 and 116 and as authorized by the Association's governing

[1] Subsequent moving papers were filed by both parties after the Court granted relief on Defendant's Motion to Extend Time to File Sur-Reply. Plaintiff filed a short Opposition to Defendant's Sur-Reply, which Defendant moved to strike. Defendant's Motion to Strike was denied by the Court's minute order dated March 23, 2011.

ANGIUS & TERRY LLP
1120 N. Town Center Dr.
Suite 260
Las Vegas, NV 89144
(702) 990-2017

documents ("CC&Rs"), so long as the assessments at issue were for common expenses based on the periodic budget adopted by the Association pursuant to NRS 116.3116(2)(c).

Question No. 2: If the Association has the right to bring a judicial foreclosure action to satisfy its SPL in Nevada, are the non-attorney fees and costs of collection accrued by the Association to bring the judicial foreclosure action considered a component part of the Association's SPL?

Answer to Question No. 2: Yes. The Court finds that the non-attorney fees and costs of collection accrued by the Association to bring a judicial foreclosure action in Nevada to satisfy its SPL are a component part of the Association's SPL. Moreover, the Court concludes that attorney's fees accrued by the Association to bring a judicial foreclosure action in Nevada to satisfy its SPL are also considered to be a component part of the Association's SPL. Any attorney's fees considered to be part of the Association's SPL must be "reasonable" pursuant to the Association's governing documents, specifically Article 6, Section 6.1.

IT IS SO ORDERED that Plaintiff's Motion for Declaratory Relief is GRANTED.

DATED this 21st day of May, 2011.

By: _____
JUDGE VALORIE J. VEGA
DISTRICT COURT JUDGE

Respectfully Submitted by:

By: _____
Paul P. Terry, Jr. (NBN 7192)
William Paul Wright (NBN 7564)
Troy R. Dickerson (NBN 9381)
ANGIUS & TERRY LLP
1120 N. Town Center Drive, Suite 260
Las Vegas, NV. 89144
Attorneys for Plaintiff

ANGIUS & TERRY LLP
1120 N. Town Center Dr.
Suite 260
Las Vegas, NV 89144
(702) 990-2017

Ex. 9

Electronically Filed
05/13/2011 03:46:07 PM

CLERK OF THE COURT

OGM/JUDG
MARTIN & ALLISON LTD.
Debra L. Pieruschka (#10185)
Noah G. Allison (#6202)
3191 East Warm Springs Road
Las Vegas, Nevada 89120-3147
Tel (702) 933-4444
Fax (702) 933-4445
dpieruschka@battlebornlaw.com
nallison@battlebornlaw.com
Attorneys for Nevada Association Services, Inc.

DISTRICT COURT

CLARK COUNTY, NEVADA

JP MORGAN CHASE BANK, N.A. a National Association,

Plaintiff,

vs.

COUNTRYWIDE HOME LOANS, INC., a New York corporation; COUNTRYWIDE WAREHOUSE LENDING, INC., a California corporation; CITIMORTGAGE, INC., a New York corporation; NV MORTGAGE, INC., a Nevada corporation d/b/a SOMA FINANCIAL; SOMA FINANCIAL, INC., a Nevada corporation; NEVADA ASSOCIATION SERVICES, INC., a Nevada corporation; JOHNATHAN D. AMOS, an individual; MELISSA SMILEY a/k/a MELISSA AMOS, an individual, DOES 1 through 10, ROE CORPORATIONS 1 through 10, inclusive,

Defendants.

ALL RELATED CLAIMS.

CASE NO.: 08-A562678

DEPT.: XVI

ORDER AND JUDGMENT

Date: April 7, 2011
Time: 9:00 a.m.

Defendant Nevada Association Service, Inc.'s Motion for Determination of Priority Amount Including Attorney's Fees and Costs ("Motion") came on for rehearing on April 7, 2011. Debra L. Pieruschka, Esq. of Martin & Allison Ltd. appeared on behalf of Nevada Association Services, Inc. ("NAS"), Jason D. Smith, Esq. of Santoro, Driggs, Walch, Kearney, Holley & Thompson appeared on behalf of JP Morgan Chase Bank ("Chase"), and no other party or counsel having appeared at the

05-10-11

MARTIN & ALLISON LTD.
3191 E. Warm Springs Road
Las Vegas, Nevada 89120-3147

rehearing of this matter. The Court having reviewed the moving papers, opposition papers and reply papers submitted by counsel and hearing oral argument, good cause appearing, the Court issued a decision on April 8, 2011, and enters the following findings of fact and conclusions of law:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. On August 27, 2010, this Court issued an order denying Chase's Motion for Summary Judgment and granting NAS's Countermotion for Summary Judgment in part, determining that NAS has a "super priority" position for no more than nine (9) months of assessments senior to Chase's equitable lien finding that:

a. The Property at issue in this matter is part of a common-interest ownership community. As such, NRS 116 governs the priority of NAS's lien over Chase's equitable lien.

b. NRS 116.3116(1) establishes NAS's statutory right to a lien for any assessments from the time they become due.

c. Pursuant to NRS 116.3116, recording of the Declaration by the Association constitutes record notice and perfection of the lien – no further recordation of any claim of lien is required.

d. NRS 116.3116(2) establishes the priority of NAS's liens against the Property. Specifically, NRS 116.3116(2) provides that NAS's lien is prior to all other liens and encumbrances except:

(1) a lien or encumbrance recorded prior to the recording of the Declaration of the association;

(2) a first security interest recorded before the date on which the assessment sought to be enforced became delinquent; and

(3) liens for real estate taxes and other governmental assessments.

e. NRS 116.3116(2) further provides NAS with a limited priority even over a first security interest recorded against the property for nine (9) months of assessments that would have become due immediately preceding institution of an action to enforce the lien.

f. Chase's equitable lien attached to the property on August 9, 2007 when its Deed of Trust was recorded against the property.

MARTIN & ALLISON LTD.
3191 E. Warm Springs Road
Las Vegas, Nevada 89120-3147

2. The Court further directed NAS to submit further briefing to the Court to determine the extent and amount of NAS' "super priority" lien that it has against the subject property, including the issue of attorney's fees and costs.

3. After briefing by both parties, on September 16, 2010 this Court held oral arguments regarding the amount of NAS' "super priority" lien amount and granted NAS' Motion in part and denied it in part.

4. The Court found that pursuant to NRS 116.3116(2) an association has a "super priority" position over a first security interest recorded against the property for nine (9) months of assessments immediately preceding institution of an action to enforce the lien.

5. The Court further found that pursuant to NRS 116.310313 an association can recover as part of its collection costs reasonable attorney's fees and costs associated with enforcement of its assessment lien. The Court noted, however, that an analysis must be performed by the Court to determine the reasonableness of the attorney's fees using the factors articulated in Brunzell v. Gold Gate National Bank, 85 Nev. 345, 349 (1969).

6. The Court further found that pursuant to NRS 116.3116(2) an association can recover as part of its "super priority" lien amount collection costs associated with enforcement of its assessment lien.

7. As such, the Court granted NAS' Motion, in part, and awarded, as part of its "super priority" lien amount pursuant to NRS 116.3116(2), NAS $5,909.91 out of the $23,480.16 requested in delinquent assessments. The Court further awarded, as part of its "super priority" lien amount pursuant to NRS 116.3116(2), NAS $6,000.00 out of the $49,035.28 for reasonable attorney's fees and costs as part of its collection costs.

8. The Court, however, denied NAS the following requested portions of its "super priority" lien amount because it failed to provide adequate documentation to support the claim:

(a) $135.00 out of the total amount of $525.00 in late fees relating to the nine (9) months of delinquent assessments as permitted by NRS 116.3116;

(b) $1,352.00 for collection costs related to the nine (9) months of delinquent assessments as permitted by NRS 116.310313 and NRS 116.3116; and

MARTIN & ALLISON LTD.
3191 E. Warm Springs Road
Las Vegas, Nevada 89120-3147

(c) $43,035.28 in legal fees as part of its collection costs related to the collection of the "super priority" amount as permitted by NRS 116.310313 and NRS 116.3116.

9. On October 28, 2010, NAS filed a Motion for Partial Reconsideration of the Court's October 4, 2010 Order denying NAS its full collection costs including attorney's fees and costs pursuant to NRS 116.3116.

10. After supplemental briefing by the parties, on February 17, 2011, the Court granted NAS' Motion for Partial Reconsideration.

11. On April 7, 2011, after further supplemental briefing by the parties, the Court entertained oral arguments by Counsel.

12. The Court concluded that NAS can recover as part of its "super priority" its costs associated with enforcement of the Association's assessment lien including late fees and collection costs pursuant to NRS 116.3116(1) and (2).

13. The Court found that NAS properly supported its claim for $135.00 in late fees relating to the nine (9) months of delinquent assessments, pursuant to NRS 116.3116(1).

14. The Court further found that NAS properly supported its claim for $1,352.00 in collection costs relating to the nine (9) months of delinquent assessments but disallowed $743.00 of the requested $1,352.00 because $743.00 related to costs incurred by NAS after the lawsuit was filed to enforce any past due obligation and are, thus, precluded by statute.

153. The Court further found that NAS properly supported its claim for $49,035.28 in attorney's fees and costs through August 27, 2010 comprised of $1,635.28 in costs and $47,400.00 in attorney's fees in defending and protecting its statutory right to an assessment lien, pursuant to NRS 116.3116(7).

16. NAS's documented attorney's fees in the amount of $47,400.00 meet the Brunzell v. Golden Gate National Bank, 85 Nev. 345, 349 (1969) factors. That based on the qualities of the advocate, the character of the work to be done, the work actually performed by the lawyer, and the result obtained, the amount of attorney's fees and costs to be included as part of NAS' collection costs relating to its "super priority" lien amount are reasonable and necessary.

///

MARTIN & ALLISON LTD.
3191 E. Warm Springs Road
Las Vegas, Nevada 89120-3147

ORDER AND JUDGMENT

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that NAS' Motion for Determination of NAS' Priority Amount Including Attorney's Fees and Cost is **GRANTED**.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that NAS's "super priority" lien amount totals **$55,689.19** comprised as follows:

(1) An award of $5,909.91 for nine (9) months of delinquent assessments, pursuant to NRS 116.3116;

(2) An award of $135.00 in late fees relating to the nine (9) of delinquent assessments, pursuant to NRS 116.3116;

(3) An award of $609.00 in collection costs, pursuant to NRS 116.310313 and NRS 116.3116;

(4) An award of for $49,035.28 in attorney's fees and costs through August 27, 2010 comprised of $1,635.28 in costs and $47,400.00 in attorney's fees in defending and protecting its statutory right to an assessment lien as collection costs, pursuant to NRS 116.3116(7), NRS 116.310313, and NRS 116.3116.

///

///

///

///

///

///

///

///

///

///

///

///

MARTIN & ALLISON LTD.
3191 E. Warm Springs Road
Las Vegas, Nevada 89120-3147

IT IS FURTHER ORDERED ADJUDGED AND DECREED that NAS shall recover $55,689.19 plus statutory interest from Plaintiff JP Morgan Chase Bank, N.A., a National Association the judgment amount as follows:

1. $6,653.91 for delinquent assessments and partial collection costs; and

2. $49,035.28 for reasonable attorney's fees and costs comprised of $1,635.28 in costs and $47,400.00 in attorney's fees as part of NAS' collection costs.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that the judgment will accrue interest in the manner permitted by Nevada law until the judgment has been satisfied.

IT IS SO ORDERED.

Dated this 11th day of May, 2011.

DISTRICT COURT JUDGE

Submitted by:

MARTIN & ALLISON LTD.

By
Debra L. Pieruschka (Bar No. 10185)
3191 East Warm Springs Road
Las Vegas, Nevada 89120-3147
Attorneys for Nevada Association Services, Inc.

Approved/Disapproved as to form and content:

SANTORO, DRIGGS, WALCH, KEARNEY, HOLLEY & THOMPSON

By
Jeffrey R. Albregts, Esq. (Bar No. 0066)
Jason D. Smith, Esq. (Bar. No. 9691)
400 S. Fourth Street, Third Floor
Las Vegas, NV 89101
Attorneys for JP Morgan Chase Bank, N.A.

MARTIN & ALLISON LTD.
3191 E. Warm Springs Road
Las Vegas, Nevada 89120-3147

Ex. 10

Federal Housing Finance Agency
1700 G Street, N.W., Washington, D.C. 20552-0003
Telephone: (202) 414-3800
Facsimile: (202) 414-3823
www.fhfa.gov

April 26, 2011

Lucas Foletta
General Counsel
Office of the Governor
State of Nevada
101 N. Carson Street
Carson City, NV 89701

RE: SB 174

Dear Mr. Foletta:

In furtherance of our discussion regarding SB 174 and as promised, I wanted to expand on my analysis of and concerns with the provisions of the bill. As you know, the Federal Housing Finance Agency (FHFA) acts as regulator and conservator for Fannie Mae and Freddie Mac and has obligations that focus on preserving and conserving assets of the firms, avoiding losses and maintaining their safe and sound operations. The agency also oversees operations of the twelve Federal Home Loan Banks.

As we discussed, the provisions of the bill which relate to the collection of unpaid homeowners association (HOA) assessments raise significant issues. I would note Fannie Mae and Freddie Mac have provided for reimbursement of six months of regular common expense unpaid assessments. They do not reimburse for collection costs or attorney's fees. The comments that follow, therefore, relate primarily with specifics of the legislation, but I would note that, in general, the bill would alter practices for which the Enterprises do not provide reimbursement.

Specific observations concerning substantive provisions of SB 174 and problems with implementation of such a law, that I would hope would be of benefit to your consideration, are provided here:

First, Section 15 of the bill provides that "reasonable" attorney's fees and collection costs for collecting unpaid HOA assessments are included in a HOA's "super-priority lien" for assessments for common expenses. Experience shows that, in general, attorney's fees and collection costs are much higher than the amount of delinquent assessments and this bill would transfer such costs to servicers and potentially the Enterprises. In any event, general practice has been that homeowners who have title to the property and want to resolve claims related to the property would be required to pay attorney's fees and collection costs.

If a bill such as SB 174 were enacted, Fannie Mae and Freddie Mac servicers would be responsible for the payment of such attorney's fees and collection costs to the extent they are not paid by homeowners. Servicers might attempt to seek reimbursement from Fannie Mae and Freddie Mac, however, Enterprise seller-servicer guides prohibit reimbursing servicers for such attorney's fees and collection costs. In addition, attorney's fees and collection expenses could increase foreclosure costs and increase the costs to purchasers of homes coming to the market.

Second, with regard to capping collection fees under Section 15, the set amount of $1950 is not a true limitation as an exception exists transferring authority to homeowners associations to make a declaration to provide that a lien may exceed the statutory cap without limitation. Therefore, because the provision allows the HOA's declaration to govern over the statutory cap, but then applies the limitation to "any other amounts due the association pursuant to the governing documents," the cap may be illusory. While Fannie Mae and Freddie Mac, as noted above, would not reimburse for such collection fees, the language as reported appears to provide no firm capping of such fees in any event.

Third, Section 15 is somewhat ambiguous about the lien for collection costs. In particular, it is unclear what time frame is involved for which such collection costs would be afforded lien priority. As we discussed, Fannie Mae and Freddie Mac do not reimburse for such costs.

Finally, I would note that this measure would represent a significant change to existing law and practice and could have unintended consequences in the current market environment. Please do not hesitate to contact me if you have any questions regarding these comments; I may be reached at 202 414-3788.

With all best wishes, I am

Sincerely,

Alfred M. Pollard
General Counsel

Phone# 702.387.9758 *73912* File #: SN: 73912

date: 12/16/2013 1:32pm

EXPEDIENT RUNNER SERVICE INC.

Case #: A-13-688795-B

Case Name: Nevada Real Estate Division v Account...

Document: Motion for Leave to File Amicus Curiae Brief on Order Shortening Time & Amicus Curiae Brief

LOCATION	CITY OF	INSTRUCTIONS
■ District Court	■ Las Vegas	1 Drop Off 2 Obtain Signature 3 Pick-Up

Street Suite City State Zip

Specifics: Please deliver to Dept. 29 for Judges signatures, please check back daily and return to our office AS SOON AS IT COMES BACK. Thank you.

safelegalfiles

Return Copy:	Courtesy Copy to:	Advance Fee:	CK#	$
		no		0.00

X:_____ __/__/__

Company: Adams Law Group Contact: Assly Sayyar Phone: 702-838-7200

Address: 8010 W Sahara Ave. #260, Las Vegas, Nevada 89117

Runner:_____ Run Complete: _____ Date:_____ Copies Rec'd:_____