

September 22, 2014

Nevada Common Interest Communities
Nevada Common Interest Community Managers

Re: *Updates to Nevada's Foreclosure Laws*

Dear All:

You are aware that Nevada Common Interest Communities, their managers and attorneys, have discussed and debated the superpriority rule in NRS 116.3116(2) for years. The ombudsman's office and the district courts have issued conflicting opinions and rulings on this topic. I am pleased to let you know that the Nevada Supreme Court has finally issued the dispositive ruling on the superpriority rule.

On September 18, 2014, in the case of *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. Adv. Op. 75 (2014), the Nevada Supreme Court considered and answered the following question:

NRS 116.3116 gives a homeowners' association (HOA) a superpriority lien on an individual homeowner's property for up to nine months of unpaid HOA dues. With limited exceptions, this lien is "prior to all other liens and encumbrances" on the homeowner's property, even a first deed of trust recorded before the dues became delinquent. NRS 116.3116(2). We must decide whether this is a true priority lien such that its foreclosure extinguishes a first deed of trust on the property and, if so, whether it can be foreclosed nonjudicially. We answer both questions in the affirmative and therefore reverse.

This was a rare 4-3 decision. Justices Gibbons, Parraguirre and Cherry concurred as to the majority opinion on superpriority, but dissented from the majority opinion that association liens may be foreclosed in non-judicial proceedings. Nonetheless, the ruling is clear and does not require any further explanation from me. Unfortunately, the opinion is thirty-five (35) pages long, which is too long to send with this short letter. You can access this opinion and other recent advance opinions at <http://supreme.nvcourts.gov/>. This ruling follows years of research and effort by the real estate division, common interest community sub-section of the Nevada State Bar, which appeared as amicus curiae in earlier cases.

Please note that some questions regarding the foreclosure process still remain, including (1) whether the foreclosed owner and holder of the deed of trust have any claim to the proceeds of sale; and (2) how the holder of the first deed of trust should be noticed of the pending foreclosure so it can pay off the association lien. Feel free to contact me with any questions you may have regarding this new ruling, the foreclosure process in general, or any other questions you may have regarding your common interest communities.

Sincerely,

MATUSKA LAW OFFICES, LTD.

By:


Michael L. Matuska

Encl.

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