

From: Mark Witt mwwnv@aol.com
Subject:
Date: August 17, 2021 at 10:22 PM
To:

Mark W. Witt
7060 North Eula Street
Las Vegas Nevada 89149



Date: August 8, 2021

Administration Section Manager
State of Nevada, Department of Business & Industry
Real Estate Division
3300 W. Sahara Avenue, Suite 350
Las Vegas, Nevada 89102

To: NRED Commissioners

Request: Petition for a Declaratory Order and Advisory Opinion based on NRS 233B.120, NAC 232.040.

Issue: Does NRS 116 provide Homeowner Associations and community managers in Nevada proper legal authority to foreclose and sell FHFA properties protected under HERA?

Statutes: NRS 116, 12 US 4617, 15 US 1692f(6).

Petitioner: Mark W. Witt
7060 North Eula Street
Las Vegas, Nevada 89149

Dear Commissioner,

I am submitting this request for a Declaratory Order and Advisory Opinion to address the legal authority of Nevada Homeowners Associations (HOA's) operating under NRS 116 to collect a debt by filing a lien, foreclosing and selling a property protected under the Housing and Economic Recovery Act (HERA). HOA executive boards and community managers are required to comply with federal, state and local laws (NAC 116.405(8)(a), NRS 116A.630(2)(a). The Housing and Economic Recovery Act (HERA) was passed by the United States Congress in 2008 during the subprime mortgage crisis. The objective was to restore confidence in the banking and housing market and restore Fannie Mae and Freddie Mac's financial standing by conserving assets and protecting these entities properties from foreclosure and sale. HERA created FHFA the Federal Housing Finance Agency. Nevada HOA's are ignoring federal law and federal protections provided under HERA.

Nevada HOA's are attempting to collect the homeowners unsecured debts by filing liens, foreclosing and selling FHFA property. NRS 116 was passed by Nevada legislature in 1991. It provided authority for HOA's to file "super-priority liens" against a homeowners property to secure payment for unpaid debts. HERA was enacted in 2008 and served to protect the assets of Fannie Mae and Freddie Mac during the Banking and Financial Crisis. HERA prevents liens from attaching to FHFA properties and protects the properties from non consensual liens, foreclosure and sale. Litigation taking place in Nevada has involved NRS 116 and constitutional issues pertaining to a direct conflict between federal statutes protecting government assets under HERA and state statutes allowing foreclosures for unpaid homeowner association debts. The Nevada Supreme Court in the case of *Saticoy Bay LLC v Federal National Mortgage Association No 69-119 (5/18/2018)* issued a decision and order preempting NRS 116.3116. Preemption of NRS 116.3116 voids the statute with regard to FHFA properties. As a result, Nevada Homeowners Associations do not have legal authority under NRS 116.3116 to file liens, foreclose or sell FHFA properties. Preemption of NRS 116.3116 exempts FHFA properties from the effect of a HOA "super priority lien" and leaves HOA's, community managers and debt collectors with the homeowners unsecured debts. Unsecured debts are not collected through a foreclosure process.

The Fair Debt Collection Practice Act 15 US 1692f(6) prohibits a debt collector from " *taking or threatening to take any nonjudicial action to effect disposition or disablement of property (c) if the property is exempt by law from such dispossession or disablement* ".

FHFA properties are protected by HERA. The properties financed by Fannie Mae and Freddie Mac have been placed under FHFA Conservatorship. FHFA properties are exempt from the Nevada foreclosure laws by preemption of NRS 116.3116. HERA remains good law and the FHFA Conservatorship continues to protect FHFA properties from liens, levy, garnishment, foreclosure and sale. Nevada statutes require HOA board members (NAC 116.405(8) and community managers (NRS 116A.630(3)(a) to comply with federal, state and local laws in their duties. In addition the statutes require: a fiduciary duty (NRS 116.3103), knowledge and understanding in the principals of law NRS (116.1108), and the statute demands an obligation of good faith (NRS 116.1113), in dealing with the business of the homeowners association.

This request is made in accordance with NRS 233B.120. NRED should provide a determination to advise if Nevada HOA's are acting with proper legal authority when they take action: to lien, foreclose and sell FHFA property. NRS 116 requires HOA Board Members and Community Managers to comply with federal, state and local law in the operation and management of a Nevada HOA. The United States Congress enacted HERA in 2008. The Federal Foreclosure Bar 12 US 4617(j)(3) prevents the attachment of lien's to FHFA property and prevents the foreclosure and sale of FHFA property as a matter of law. Federal statutes provide additional consumer protections to prevent unfair and illegal debt collection practices under the FDCPA. Based on HERA and the FDCPA, it does not appear that Nevada HOA's have the power or legal authority to file a lien, foreclose or to sell FHFA property.

I am requesting an Advisory Opinion to address the legal authority of Nevada HOA's, HOA Board Members and Community Managers to lien, foreclose or sell FHFA property.

Mark Witt

A handwritten signature in black ink that reads "Mark Witt".

Questions to be addressed in Advisory Opinion

(In the following questions "HOA" includes the HOA, Board Members of the HOA and Community Managers of the HOA)

- 1) Is a HOA's legal authority under NRS 116 subject to limitations imposed by HERA and/or FDCPA in the attempt to collect a homeowners debt?
- 2) Does NRED have jurisdiction and regulatory authority to address a HOA's violations of federal law?
- 3) To what extent is the legal authority granted under NRS 116 limited by HERA and the FHFA Conservatorship?
- 4) Is it a violation under NRS 116 for HOA's to advertise for sale, or threaten to advertise for sale, FHFA properties without a court order or the consent of FHFA?
- 5) Is it a violation of NRS 116 for a HOA to lien, foreclose or sell a FHFA property without the consent of FHFA or a court order authorizing the foreclosure and sale of FHFA's property?
- 6). Does NRS 116 grant legal authority to Nevada HOA's to take action against FHFA property that is illegal under federal law?
- 7) Does NRS 116 provide HOA's the legal authority and power to :
 - a) Conduct a foreclosure on a FHFA property protected under HERA and FDCPA?
 - b) Sell a FHFA property protected under HERA and FHCPA?
 - c) Issue threats; to advertise, to lien, to foreclosure, to sell FHFA properties protected under HERA and FDCPA, in an attempt to collect a homeowners debt?

Respectfully Submitted,



Mark Witt

Reason for Requesting the Declaratory Order and Advisory Opinion:

Fannie Mae and Freddie Mac finance approximately 50% of the residential properties purchased across the country. Fannie Mae and Freddie Mac financing represents a large number of properties protected under HERA in the state of Nevada.

Advisory Opinions are an efficient way to inform Homeowner Associations (HOA's), debt collectors, lenders, investors and homeowners about the effect HERA on the laws in Nevada

Nevada statutes require HOA board members (NAC116.405(8) and community managers (NRS 116A.630(3)(a) comply with federal, state and local laws.

Nevada statutes providing HOA's legal authority to foreclose conflict with federal laws and protections provided by the United States Congress under HERA.

12 US 4617(j)(3) prevents the attachment non-consensual liens, protecting FHFA properties from "*levy, attachment, garnishment, foreclosure and sale.*"

The Nevada Supreme Court has issued decisions addressing the conflict between state and federal law with the preemption of NRS 116.3116.

The United States Court of Appeals, 9th Circuit has issued opinions and decisions addressing the conflict between state and federal law, HERA preempts NRS 116.3116.

15 U.S. 1692f(6)(c) FDCPA and HERA prohibit debt collectors from "*taking or threatening to take any nonjudicial action to effect disposition or disablement of property.*"

The Homeowners mortgage contract with FHFA provides title to a property protected by HERA from liens, foreclosure and sale.

Nevada HOA's and community managers appear to have limited authority under HERA to lien, foreclose or sell FHFA properties.

Debts cannot be secured without the attachment of a lien to a property.

The Nevada Real Estate Division has jurisdiction and regulatory oversight over HOA's, HOA boards and community managers.

FHFA as Conservator has final authority to determine the validity of claims against Fannie Mae and Freddie Mac assets.

The History and Facts:

HOA's, Board Members and their Community Managers are subject to State and Federal laws in the process of collecting debts from homeowners (NAC 116.405(8)(a), NRS 116A.630(2)(a). The Federal Housing and Economic Recovery Act (HERA) was enacted in 2008, by the United States Congress to preserve and conserve government assets during the " Subprime Mortgage Crisis" also known as the "Great Recession". HERA provides the Federal Housing Finance Agency (FHFA) with authority over critically undercapitalized regulated entities including the Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corporation (Freddie Mac).

The United States Congress provided FHFA with enormous power to control the assets of these enterprises in an effort to ensure solvency. "When FHFA is acting as Conservator, it is not subject to the direction of any other Agency of the United States, or any State, in the exercise of its rights , powers or privileges". 12 US 4617(7). The Federal Foreclosure Bar, 12 US 4617(j)(3) protects FHFA properties from liens, levy, attachment, garnishment, foreclosure and sale. The Nevada Supreme Court confirmed and resolved the conflict between NRS 116 and HERA by pre-empting Nevada's statute, NRS 116.3116 with regard to HERA and FHFA properties.

Nonjudicial foreclosures are used by HOA's, HOA Board Members and Community Managers to collect unpaid Homeowner Association (HOA) debts, including assessments, fees, fines and penalties. This practice is authorized under NRS 116. However, NRS 116 does not apply to properties financed by Fannie Mae or Freddie Mac while they under HERA and the FHFA Conservatorship. The properties financed by Fannie Mae and Freddie Mac are protected from foreclosure by the Housing and Economic Recovery Act (HERA) and the Fair Debt Collections Practices Act (FDCPA).

Nonjudicial foreclosure is provided in Nevada under the state law NRS 116. The "super-priority lien" was created from legislation passed in Nevada in 1991. The use of nonjudicial foreclosure was initially a method used by HOA's to secure a priority payment from bank foreclosures conducted under NRS 116. Foreclosures became a common occurrence during the 2008-2009 subprime mortgage crisis. During the downturn of the economy thousands of nonjudicial foreclosures were conducted on Nevada residential properties. These foreclosures were purchased by "investors" seeking to take title and extinguish the lenders Deed of Trust (DOT) under a considerably different interpretation of NRS 116. This re-interpretation of the law by the investors created considerable conflict between the parties and a backlog of cases filed in Nevada Courts.

The Nevada Supreme Court decision in *SFR Investment Pool LLC v U.S. Bank (2014)* provided judicial support to the investors claims that NRS 116 provided a true "super-priority" status, extinguishing the lenders Deed of Trust. However, this case did not involve a FHFA property or consider the effect of HERA or FDCPA on the dispossession of the property rights at stake.

The United States Court of Appeals, 9th Circuit Court decision in *Berezovsky v Moniz 869F. 3d 9231(2017,)* addressed the issue of whether the Federal Foreclosure Bar applied to private foreclosures. The federal court stated in its opinion that the "Supremacy Clause unambiguously provides that when there is a conflict between federal law and state law, federal law shall prevail." The court conducted a preemption analysis and determined that the Federal Foreclosure Bar preempted NRS 116. The court concluded that a HOA foreclosure of its super-priority lien cannot extinguish a property interest of Fannie Mae or Freddie Mac while those entities are under FHFA's conservatorship.

The Nevada Supreme Court has issued numerous decisions related to NRS 116 in the last eight years. The Nevada Supreme Court provided an important decision with *Saticoy Bay LLC v Federal National Mortgage Association No 69419 (5/18/ 2018)* addressing the conflict between the state law (NRS 116) and Federal law, known as the Federal Foreclosure Bar (12 US 4617(j) (3)). The Nevada Supreme Court determined there was an implicit conflict between 12 US 4617 and NRS 116. As a result the Nevada Supreme Court issued an opinion pre-empting NRS 116.3116 with respect to FHFA properties. This decision produced a significantly different outcome for FHFA by preserving the lenders Deed of Trust, which would have been extinguished under NRS 116.

The authority to foreclose is derived from the power of the state, granted through the legislative process and defined by statute. The Nevada Legislature provided a "super-priority lien" by statute these liens attach to a property and take priority over other liens. There are conditions where this does not occur. There are "exceptions to the rule" where a "super-priority lien" does not attach to a property. The exceptions are outlined in the statute under NRS 116.3116 (a-c). Noted exceptions to the "super priority" lien priority status include Tax liens and Government Assessments. NRS 116.3116 also requires lien priority to be "determined in accordance with federal regulations".

The Nevada Supreme Court and the federal District Court of Appeals, for the 9th Circuit have issued decisions regarding Nevada's "super priority lien" statutes. NRS 116.3116 was pre-empted by a decision of the Nevada Supreme Court and similar conclusions and orders have been issued by the federal Court of Appeals. These opinions specifically apply to Fannie Mae and Freddie Mac properties. Pre-emption of NRS 116.3116 voids the statute and the legal authority of HOA's, Board Members and Community Managers who continue to rely on NRS116 as the basis for their authority to foreclose and sell FHFA properties in Nevada.

The Property Protection Clause of 12 US 4617(j)(3), states: *"No property of the Agency shall be subject to levy, attachment, garnishment foreclosure or sale without the consent of the Agency, nor shall any involuntary lien attach to the property of the Agency."* When this statute is in effect, the property of FHFA is protected from the attachment of liens and any debts owed to the HOA remain unsecured.

The Penalties and Fines Clause 12 4617 (j)(4) states: *"The agency shall not be liable for any amounts in the nature of penalties or fines, including those arising from the failure of any person to pay any real property, personal property, probate, or recording tax or any recording or filing fees when due."*

HOA's, their board members and community managers Collectors are subject to state and federal law including HERA and the Fair Debt Collections Practices Acts (FDCPA). There are state and federal Fair Debt Collection Statutes. The Federal Fair Debt Collection statute, 15 U.S. 1692f(6)(c) prohibits debt collectors from *"taking or threatening to take any nonjudicial action to effect disposition or disablement of property,(c) if the property is exempt by law from such dispossession or disablement."* This law is intended to prevent abusive, unfair or deceptive practices when attempting to collect a debt. HERA provides protections from liens, levy, garnishment attachment, foreclosure and sale. Ensuring FHFA properties are *"exempt"* from the *"dispossession and disablement"* considered in the FDCPA.

Fannie Mae, Freddie Mac and the FHFA properties are not subject to foreclosure or sale based on contractual any agreement. FHFA is not a party the contract between the homeowner and the HOA. FHFA is not subject to the associations CCR's. The HOA has no authority over FHFA, Fannie Mae, Freddie Mac or any of their properties. HERA essentially shields FHFA properties from any lien, foreclosure, sale and it shields FHFA from any payment obligation 12 US 4617(j)(4) the *Fines and Penalties Clause*. Homeowner Associations have no authority to foreclose on a FHFA property. The authority foreclose must come from either a contract or a statute. The HOA does not have an enforceable contract with FHFA providing the HOA a private right to foreclose. In addition, there is no statutory authority because NRS 116.3116 does not apply to FHFA properties. The law in fact has been pre-empted by decision of the Nevada Supreme Court. On the other hand, HOA's, Board Members and Community Managers are required to comply with federal law (NAC 116.405(8)(a), NRS 116A.630(2)(a). There is a fiduciary duty under NRS 116.3103 to comply with the law.

Nonjudicial foreclosures are especially problematic because there is no oversight by the courts. The process deprives lenders and homeowners the opportunity for due process and proper consideration of the law. A non-judicial foreclosure and sale under NRS 116 results in the extinguishment of the lenders Deed of Trust. Except when the property is owned by FHFA. A clearly a different outcome is ordered by the Nevada Supreme Court in the case of FHFA properties. These properties are protected by HERA and the FHFA Conservatorship. The Nevada Supreme Court and the federal Court of Appeals resolved the conflict in the only way possible, pre-emption of NRS 116.3116. Preemption voids the statute and the effect of NRS 116 with regard to FHFA. The HOA is unable to attach a lien to FHFA property, HERA prevents foreclosure and sale of FHFA property and FHFA's Deed of Trust is preserved.

Nevada HOA's, board members and community managers rely on NRS 116 to provide them legal authority to conduct non-judicial foreclosures of real property. Foreclosure and sale is the last method used by HOA's to collect secured debts related to the assessments, fees, fines and penalties imposed by the HOA. However, NRS 116 does not apply to FHFA properties because it conflicts with HERA. FHFA properties are protected under HERA. The FHFA Conservatorship provides the "Agency" with final rule making authority to determine the validity and to dispose of all claims against FHFA. Foreclosure of FHFA properties is inconsistent with the protections provided under federal statutes. The effect of HERA is to ensure that FHFA properties are conserved and protected from liens, attachment, garnishment, foreclosure and sale. HERA created FHFA and assigned the assets of Fannie Mae and Freddie Mac under the FHFA Conservatorship in order to prevent third party foreclosure of its properties. The method implemented by congress to protect the assets depends on the authority of the federal law to override conflicting state law. HERA stops HOA liens from attaching to FHFA properties. A mortgage contract with Fannie Mae and Freddie Mac, provides title to a property protected by federal law from HOA liens, foreclosure and sale.

The Deed of Trust is protected by HERA. FHFA properties have been placed in a Conservatorship. The Deed of Trust is isolated from the threat of foreclosure by a third parties. When the homeowner has a mortgage contract with Fannie Mae or Freddie Mac, the Deed of Trust for the property is held in a separate banking trust used to secure mortgage backed securities sold by the government. The property and the Deed of Trust are legally protected from any third party attempting to collect on a homeowners unpaid debts. The mortgage contract signed by the homeowner provides a "title in equity" which gives the homeowner the right to occupy and control the property. The mortgage with Fannie Mae (or Freddy Mac) gives a homeowner "title" to a property with federal protections granted under HERA. The property is protected under the FHFA Conservatorship from liens, foreclosure and sale. The Deed of Trust belongs to FHFA until the note is satisfied. The Deed of Trust is legal proof of the ownership of the property. HERA protects the Deed of Trust from third party foreclosures. The HOA has no contractual right to foreclose the property. NRS 116 is pre-empted by 12 US 4617 and voids any statutory authority to foreclose. These are simply illegal foreclosures used to collect an unsecured debt.

Federal law overrides state law when the laws conflict. This is a well known legal principal and general knowledge to almost anyone graduating high school in America. Homeowner Associations, HOA executive boards, and the community managers have a fiduciary duty (NRS 116.3103, NRS 116A.630(1) (a-b)) to understand their business, the legal environment their business operates in and a requirement to act with business judgement exercising reasonable care, and good faith. The HOA are expected to be aware of federal and state laws pertaining to the industry. HERA covers a significant number of homes in Nevada. Its estimated Fannie Mae and Freddie Mac finance 50% of the homes sold in the United States. HERA protects every Fannie Mae and Freddie Mac residential property purchased in the state of Nevada since 2008. These homeowners are not receiving the federal protections guaranteed by law when HOA's are allowed to foreclose and sell FHFA properties. These unpaid HOA assessments are nothing more than unsecured debts. Unsecured debts are collected by court order. Another option for the HOA is to contact the FHFA loan servicer, Fannie Mae requires servicer's to pay the HOA assessments according to the Fannie Mae servicing guide SVC 2012-05.

The HOA, HOA Board Members and Community Managers cannot avoid a violation of HERA if it takes action to lien, foreclose or sell FHFA property. While FHFA has not pursued legal recourse against HOA's it does not mean it can't. It's a difficult and expensive proposition to overturn these illegal nonjudicial foreclosures. The legal process is slow and expensive. In most cases the homeowner is going to be forced to walk away simply due to financial considerations. Homeowners having financial difficulties usually make this decision before the sale takes place. If the homeowner decides to fight the illegal foreclosure to save their home, they will immediately start to incur legal expenses. The homeowner is forced to hire a lawyer to stop eviction and address the investors Quiet Title Action. In addition, a separate lawsuit is required to overturn the illegal foreclosure or seek monetary damages.

The investor's file a Quiet Title Action's in state court based on the NRS 116 and the Nevada's "super priority lien" statutes. The homeowner bears the burden of the legal expenses associated with trying to void an illegal sale and addressing the investors Quiet Title Action and eviction. Investors are well versed in the process and they have the financial resources to employ a team of attorneys. The investor will name the homeowner in the Quiet Title Action and omit naming FHFA at this point. The Trustees Deed provided at the sale is used to obtain a court order to evict the homeowner. The Trustees Deed typically indicates "The sale was conducted in accordance with the law". The Trustees Deed is considered "conclusive proof" of compliance with NRS 116 under Nevada law. When the trustees deed is validated by the court it transfers "title" to the property along with an eviction order. The legal fight is a very expensive "pay to play" proposition for the homeowner. The homeowner faces the loss of their home and their credit will be destroyed if they stop paying on the mortgage.

The government is not going to enforce the statutes to protect you! It requires the filing of a law suit to protect your credit and your home. Attorneys are expensive and there is limited access to qualified attorneys in doing this type of work in Nevada. The licensed attorney's who have the experience to deal with the issues are the same attorneys that work for the banks, collection agencies, HOA's and investors purchasing these properties. These attorneys typically are expensive and most have professional conflict's of interest that prevent them from assisting a homeowner faced with this type of foreclosure sale. FHFA properties are protected by federal statute from foreclosure and sale. However, FHFA is not going to provide a homeowner with an attorney to file a suit for wrongful foreclosure or an eviction.

If there's a dispute with the HOA over the CCR's the homeowner is required to mediate first under NRS 38. The HOA disputes can involve irregularities in the HOA's accounting and posting payments, disagreements over fees, fines, penalties, collection costs, attorney fees and any number of other issues! Homeowners Associations have been known to foreclose on debts that can't legally foreclose on ! (See NRED Advisory Opinion 13-01). The NRED mediation process creates unnecessary delays and expenses for the homeowner. It's non-binding on the parties and increases the costs and drags out the process.

The process as it exists, provides investors the ability to collect rent on the property until these cases are settled.. Investors pay pennies on the dollar for these properties. They can turn most of these into productive rentals with minimal cost. Legal expenses are just the cost of doing business. If a suit is filed by a lender the investors is able to respond and they will appeal any unfavorable decision as long as they can collect rent on the properties. The longer they delay, the more money they collect on their rental properties. The investors whole game is to capitalize on the legal system, using the courts and the appeals process, to delay the final outcome as long as possible. The investors end game is to extinguish the lender's Deeds of Trust. If they are successful, they own the properties free and clear.

Summary of Facts

The primary issue to be considered in this request is whether or not Nevada HOA's, Board Members and Community Managers have legal authority under NRS 116 to lien, foreclose and sell FHFA properties. HERA was enacted by Congress to conserve government assets. HERA prevents the attachment of nonconsensual liens on FHFA properties. HOA Board Members and Community Managers make decisions regarding the debt collection activities of the HOA. Community Managers are considered debt collectors and they are subject to Fair Debt Collection practices. The FDCPA specifically forbids debt collectors from *"taking or threatening to take any nonjudicial action to effect disposition or disablement of property when the property is exempt from disposition or disablement by law."*

When the homeowner is subject to a Fannie Mae or Freddie Mac mortgage the property they have title to is protected by HERA and the FHFA Conservatorship. The homeowner's HOA debts are unsecured debts. HERA blocks any lien from attaching to FHFA property. HERA and FDCPA are federal regulations that limit the authority of HOA's to lien, foreclose and sell FHFA properties. HOA's have no legal authority under HERA to lien, foreclose or sell FHFA property. unsecured personal debts. There is no enforceable contract between the HOA and FHFA. There is no contractual right to foreclose because FHFA has not entered into a contract with the HOA. The HOA doesn't own the Mortgage, Note or the Deed of Trust. The HOA's contract is exclusively with the homeowner, it does not include FHFA as a party. FHFA is not bound by the homeowner association's CCR's. The FHFA Conservatorship shields the property from liens and foreclosure. HOA's are legally prevented from taking action against FHFA properties by HERA and the FDCPA.

Homeowner Associations and community managers make the mistake of relying on NRS 116 when they take action to foreclose on FHFA properties. The HOA's authority to lien a property under NRS 116.3116 does not extend to properties protected under HERA or the FHFA Conservatorship. HOA's have no legal authority to foreclose on FHFA's properties. Federal statutes are simply being ignored. Nevada law requires the executive board members and community managers to comply with federal, state and local law. Nevada HOA's have generally disregarded HERA in favor of NRS 116 nonjudicial foreclose even when they deal with the foreclosure and sale of FHFA properties. The Nevada Supreme Court and the Federal Court of Appeals opinions favoring HERA has not changed the behavior.

Illegal HOA foreclosures negatively affect lenders and homeowners. It's been a bit of a showdown between FHFA and the investors. The battle continues in Nevada courts, Investors collecting rent on hundreds of properties while they fight FHFA over their Deeds of Trust. HERA provides FHFA with significant power. The statute is clear and to the point, it takes less than 20 minutes to read 12 US 4617, its available using google and a phone or computer. HOA's have created the problem and they should be forced to wake up ! They waste far to much of other peoples time, money and resources. HOA's need to understand the law. Nevada HOA's have no legal authority to file liens, foreclose or sell FHFA properties.

In the right situation, nonjudicial foreclosures provide a perfect tool for collecting debts; A non-judicial foreclosure is quick, provides an asset of value, there is investor demand, its inexpensive, and there's no oversight by the courts! It's also the perfect tool for the investor; allowing a "trustees deed" to convey title under a NRS 116 sale. The Trustees Deed provides a "conclusive presumption" that the foreclosure complied with Nevada law. However, the process of filing the lien, foreclosing and selling FHFA property is a violation of federal law. It does not comply with HERA or FDCPA.

The "Foreclosure Trustee" in a NRS 107 nonjudicial foreclosure is supposed to be a neutral party. In a position of "trust" and possessing knowledge of the law. Many times the debt collector employed by the HOA acts as the "Foreclosure Trustee" and they are the ones that issue the Trustee Deed after the sale. The trustees deed is used to transfer title to the investor. If the lender on the property is Fannie Mae or Freddie Mac the property falls under the FHFA Conservatorship. The sale subjects the Deed of Trust to extinguishment under NRS 116. FHFA properties are asset of the United States the same assets congress intended to preserve under HERA. The Foreclosure Trustee provides a trustee deed that transfers the FHFA property to an investor and potentially extinguishes the Deed of Trust. This could easily be considered a fraudulent conveyance of the governments property. The same issue is addressed by the Nevada Supreme Court and the Court of Appeals, 9th Circuit, preempting NRS 116.3116. In those cases the Court made decisions and orders preserving FHFA's Deed of Trust..

When the property is under the FHFA conservatorship, HERA protects the property. The HOA's lien is prevented from attaching to the property, and the lenders Deed of Trust is preserved (See Nevada Supreme Court's decision *Saticoy Bay LLC v Federal National Mortgage Association No 69419 (5/18/ 2018)*). When HERA protects the property, the HOA's liens are prevented from attaching and a homeowners HOA debts are unsecured. The HOA, HOA Board Members and Collection Managers and the debt collectors working for them have no statutory or other legal authority to non-judicially foreclose on FHFA properties in an effort to collect a homeowners debt.

The homeowners debt in these cases remains unsecured. The HOA has a right to collect the homeowners unpaid debt. It requires due process, a hearing and a judgement order from a court, if the HOA wants to go that route. They can also try contacting the loan servicer. Servicer's are required to pay assessments. MERS database is online, it will identify FHFA loans, addresses and the servicer's contact information for a given address. Fannie Mae and Freddy Mac also have websites.

HERA protects a significant portion of the residential properties located in the state of Nevada. Properties financed by Fannie Mae or Freddie Mac are protected under HERA and the FHFA Conservatorship. NRS 116.3116 foreclosures do not apply to FHFA properties. As long as HERA remains in effect, FHFA properties are protected from the attachment of liens, levy, garnishment, foreclosure and sale. HERA blocks attachment of HOA liens to FHFA properties. If FHFA has not consented to the foreclosure of the property the HOA debts remain the unsecured debts of the homeowner. Nevada debt collectors and their managers have no legal authority to use nonjudicial foreclosure as a means to collect unsecured debts.

An Advisory Opinion is an efficient way to inform interested parties about what is proper and what legal. It puts people on notice and resolves unanswered questions. Lenders and homeowners should not be required to endure piecemeal litigation to protect FHFA properties from illegal nonjudicial foreclosures. This is especially true when the HOA's, HOA Executive Board and collection managers authority is derived from the power provided by the state.

Homeowners have lost their homes, equity and credit destroyed in spite of purchasing homes with Fannie Mae or Freddie Mac financing. These properties have federal protections in place. FHFA are forced to spend millions in legal fees and costs trying to overturn the nonjudicial foreclosures. The foreclosures are illegal but it's taking years to resolve the lawsuits because the investors are making a lot of money renting the properties. The investors delay and appeal as long as possible. Investors with hundreds of these rentals are willing to take the cases all the way to the US Supreme Court . Time is money!

An advisory opinion addressing the legal authority behind the nonjudicial foreclosure of FHFA could help. I believe HOA's are part of the problem, they need better education to solve these issues.

I am not currently a party to a law suit, administrative, civil or criminal proceeding in which this is an issue.

Statutes:

NRS 116., NRS 116.3116 to NRS116, 3118,NRS 116.3103, NRS 116.1113, NRS 116.1108,NRS 116A.6301(a-b), 116A.630(2)(a), NAC 116.405, NAC116. 405(8)(a)
12 US 4617
12 US 4617(j)(3)
15 U.S. 1692f(6)(c)

Cases:

Saticoy Bay LLC v Federal National Mortgage Association, No 69419 (5/18/ 2018) Nevada Supreme Court.
Berezovsky v Moniz 869F. 3d 9231 (08/25/17) United States Court of Appeals , Ninth Circuit.

Questions to be addressed in Advisory Opinion

(In the following questions "HOA" includes the HOA, Board Members of the HOA and Community Managers of the HOA)

- 1) Is a HOA's legal authority under NRS 116 subject to limitations imposed by HERA and/or FDCPA in the attempt to collect a homeowners debt?
- 2) Does NRED have jurisdiction and regulatory authority to address a HOA's violations of federal law?
- 3) To what extent is the legal authority granted under NRS 116 limited by HERA and the FHFA Conservatorship?
- 4) Is it a violation under NRS 116 for HOA's to advertise for sale, or threaten to advertise for sale, FHFA properties without a court order or the consent of FHFA?
- 5) Is it a violation of NRS 116 for a HOA to lien, foreclose or sell a FHFA property without the consent of FHFA or a court order authorizing the foreclosure and sale of FHFA's property?
- 6) Does NRS 116 grant legal authority to Nevada HOA's to take action against FHFA property that is illegal under federal law?
- 7) Does NRS 116 provide HOA's the legal authority and power to :
 - a) Conduct a foreclosure on a FHFA property protected under HERA and FDCPA?
 - b) Sell a FHFA property protected under HERA and FHCPA?
 - c) Issue threats; to advertise, to lien, to foreclosure, to sell FHFA properties protected under HERA and FDCPA, in an attempt to collect a homeowners debt?

Respectfully Submitted,



Mark Witt

Questions to be addressed in Advisory Opinion

(In the following questions "HOA" includes the HOA, Board Members of the HOA and Community Managers of the HOA)

- 1) Is a HOA's legal authority under NRS 116 subject to limitations imposed by HERA and/or FDCPA in the attempt to collect a homeowners debt?
- 2) Does NRED have jurisdiction and regulatory authority to address a HOA's violations of federal law?
- 3) To what extent is the legal authority granted under NRS 116 limited by HERA and the FHFA Conservatorship?
- 4) Is it a violation under NRS 116 for HOA's to advertise for sale, or threaten to advertise for sale, FHFA properties without a court order or the consent of FHFA?
- 5) Is it a violation of NRS 116 for a HOA to lien, foreclose or sell a FHFA property without the consent of FHFA or a court order authorizing the foreclosure and sale of FHFA's property?
- 6). Does NRS 116 grant legal authority to Nevada HOA's to take action against FHFA property that is illegal under federal law?
- 7) Does NRS 116 provide HOA's the legal authority and power to :
 - a) Conduct a foreclosure on a FHFA property protected under HERA and FDCPA?
 - b) Sell a FHFA property protected under HERA and FHCPA?
 - c) Issue threats; to advertise, to lien, to foreclosure, to sell FHFA properties protected under HERA and FDCPA, in an attempt to collect a homeowners debt?

Respectfully Submitted,

Mark Witt