

NEVADA SUPREME COURT HOLDS THAT A NOTICE OF DEFAULT DOES NOT TRIGGER NEVADA'S ANCIENT LIEN STATUTE

by Rami M. Hernandez, Esq. and Darren T. Brenner, Esq. of Wright, Finlay & Zak, LLP

In a welcome development for loan servicers, the Nevada Supreme Court recently ruled that the recording of a Notice of Default does not render a secured loan wholly due (i.e., accelerated) under Nevada's ancient lien statute. (*LV Debt Collect, LLC v. Bank of N.Y. Mellon*, 534 P.3d 693, 139 Nev. Adv. Rep. 25 (2023)). The relevant statute (NRS 106.240) provides that a loan is deemed extinguished 10 years after it is "wholly due". Historically, this statute seldomly came into play because it was presumed that "wholly due" referred to the maturity date explicitly stated on the Deed of Trust. However, investors who purchased properties at HOA lien sales started arguing that the acceleration of a loan via a Notice of Default made the loan wholly due. This has spawned a cottage industry of litigation on the issue that the Nevada Supreme Court has now, at least in part, resolved.

As background, the Nevada Supreme Court's 2014 ruling in *SFR Inns. Pool 1, LLC L. U.S. Bank, N.A.*, 130 Nev. 742, 758, 334 P.3d 408, 419 (2014), held that an HOA foreclosure could wipe out the first deed of trust if the super-priority portion of the lien (considered nine months of assessment) were not paid off prior the foreclosure sale. This resulted in a flood of quiet title litigation that lasted for years and resulted in hundreds of liens being wiped out by HOA foreclosure sales that took place prior to the ruling. After the dust settled, and the legislature passed much needed reforms to the relevant statute, the investors who purchased the properties at the HOA lien sales, but did not prevail in the quiet title matters, faced the foreclosure of their properties, most of which had been rented out for years without any compensation to the lien holders.

In an effort to stave off the foreclosures (and to collect rents for as long as possible), the investors filed new quiet title cases that claimed that because the Deed of Trust holders had recorded Notices of Default that are over ten years old, the Deeds of Trust were extinguished because the Notices accelerated the loan—thus making the Deeds of Trust wholly due. Previously, the Supreme Court held that a rescission of the Notice of Default "restored the parties to the prior status they held before the Notice of Default was filed. *Glass v. Select Portfolio Servicing, Inc.*, 466 P.3d 939 (Nev. 2020) (citing to *Holt v. Reg'l Tr. Servs. Corp.*, 127 Nev. 886, 892, 266 P.3d 602, 606 (2011)). However, *Glass* did not address whether the recording of the Notice of Default accelerates the loan so as to make it wholly due.

The *LV Debt Collect* decision appears to have put that issue to rest. Specifically, the Nevada Supreme court found that the legislature did not intend for Notices of Default to trigger the "wholly due" requirements of NRS 106.240. Further, the Court held "a deed of trust can only be presumed satisfied under NRS 106.240 when ten years have passed after the last possible date the deed of trust is in effect, as shown by ***the maturity date on the face of the deed of trust or any recorded extension thereof***, rather than a document like a Notice of Default that can sometimes have multiple iterations, recordings, rescissions, and other circumstances that would not give the clarity to property records this statute was designed to bring." (emphasis added). Finally, the court reiterated a prior ruling in *Clayton v. Gardner*, 107 Nev. 468, 470, 813 P.2d 997, 999 (1991), that acceleration of a debt must "be exercised in a manner so clear and unequivocal that it leaves no doubt as to the lender's intention."

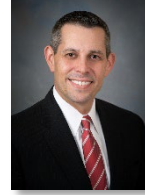
LV Debt Collect helps resolve an important legal question that had been lingering in the ancient lien statute cases. While HOA investors still claim this decision does not address whether a Deed of Trust acceleration can still make the loan wholly due, it appears the Nevada Supreme Court disagrees and has found that "wholly due" refers to due date stated on the Deed of Trust. The Nevada Supreme Court also stated that it would not extinguish deeds of trust that had been litigated for years in prior HOA quiet title litigation. It is expected that the Nevada Supreme Court will issue further rulings on other issues related to NRS 106.240. If that happens, we will provide you with further updates.

If you have any questions regarding this article or any other title or legal issues in Nevada, please feel free to contact Rami Hernandez at rhernandez@wrightlegal.net or Darren Brenner at dbrenner@wrightlegal.net.



Rami M. Hernandez, Esq.
rhernandez@wrightlegal.net

Rami Hernandez is a Senior Associate Attorney at WFZ's Nevada office.



Darren T. Brenner, Esq.
dbrenner@wrightlegal.net

Darren Brenner is a Partner at WFZ's Las Vegas office.

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