

# Demystifying Current Real Estate Problems

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- I. Demystifying Current Real Estate Problems
  - A. Nevada's Homeowner Bill of Rights
  - B. Assembly Bill 273 And the Sandpointe Decision
  - C. Current Developments in Nevada Residential Foreclosures
    - i. Notice of Default
    - ii. Foreclosure Mediation
    - iii. Assembly Bill 300
  - D. Current Developments in Arizona Residential Foreclosures
    - i. ARS 33-807.1 Notice before trustee's sale commenced on residence
    - ii. ARS 44-1378.02 – Limitation on Foreclosure Consultants
    - iii. Arizona anti-deficiency cases
      1. M&I vs Mueller
      2. Helvetica Servicing, Inc. v. Pasquan
    - iv. Foreclosure statistics
    - v. ARS 33-420.01 – HELOC payoffs

## **WESTERN CONSUMER BANKRUPTCY CONFERENCE 2014**

- vi. ARS 11-1133 – Disclosure of Mortgage Insurance Proceeds
  - vii. ARS 33-1331 – Disclosure to tenant of pending foreclosure
  - viii. Arizona Exemptions Increased
- E. Update on the National Mortgage Settlement
- i. Enforcement and Compliance Update

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### **Homeowner's Bill of Rights - SB 321**

- On June 3, 2013, Nevada enacted a Homeowner's Bill of Rights to establish protections from foreclosure for owner-occupied residential mortgage loans.
- Provides the following protections, among others, to Nevada homeowners facing foreclosure:
  - 30-Day Letter
  - No Dual Tracking
  - Single Point of Contact
  - Judicial Foreclosure Mediation
  - Contact Prior to Pre-Foreclosure Documents
  - No Arm's Length Requirement for Short Sales



### **ARS 33-807.1 Notice before trustee's sale commenced on residence**

- For a property with a first deed of trust recorded on or after January 1, 2003 through December 31, 2008, if the borrower occupies the property as the borrower's principal residence, before a trustee may give notice of a trustee's sale for the property pursuant to Section 33-808., the lender must attempt to contact the borrower (in writing) to explore options to avoid foreclosure at least thirty days before the notice is recorded.
- This section does not apply to:
  - Loans made, purchased or serviced by a state or local public housing agency or authority.
  - Deeds of trust that were prepared in connection with five or fewer loans that were funded by a single lender, or group of lenders in concert, in one calendar year.
  - Lenders compliant with the United States Department of Treasury Home Modification Program.

### **Assembly Bill 273**

- On June 10, 2011, NRS 40.459(1)(c) was added to Nevada's law by Assembly Bill 273, which limits the amount of a deficiency judgment a creditor may obtain after foreclosure where the right to obtain the judgment was transferred from the original lender.



## **Assembly Bill 273**

- Sandpointe Apts. v. Eighth Jud. Dist. Ct., 2013 WL 6231270 (Nev. Nov. 14, 2013)
  - NRS 40.459(1)(c) only available as a defense to a deficiency lawsuit when the underlying real property was foreclosed upon after the effective date of the statute, or June 10, 2011.
  - If the underlying real property was foreclosed upon before June 10, 2011, the Nevada Supreme Court concluded that application of NRS 40.459(1)(c) would constitute retroactive application of the statute, which the Nevada Legislature did not clearly intend.



## **ARS 44-1378.02 - Foreclosure Consultants shall NOT:**

- Receive any compensation until after the foreclosure consultant has fully performed each covered service that the foreclosure consultant contracted to perform.
- Charge any fee, interest or other compensation for any reason that is not fully disclosed to the homeowner.
- Take any wage assignment, lien on real or personal property, assignment of a homeowner's equity or other interest in a residence in foreclosure or other security for the payment of compensation.
- Receive any consideration from any third party in connection with a covered service unless first fully disclosed.
- Acquire, directly or indirectly, any interest in the residence in foreclosure of a homeowner with whom the foreclosure consultant has contracted to perform a covered service.
- Accept a power of attorney from a homeowner for any purpose, other than to inspect documents as provided by law.

## Arizona anti-deficiency cases

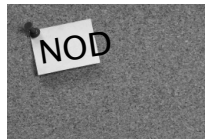
- ***M&I vs Mueller***. (Az Ct Appeals, Div 1, 12/27/11) 1 CA-CV 10-0804 CV 2009-031468 This case is distinguishable from Mid Kansas. Although the Muellers never actually occupied the dwelling, they intended to personally occupy it upon its completion. Therefore, we affirm the lower court summary judgment for the homeowners and rejecting M&I's claim for a deficiency claim.
- ***Helvetica Servicing, Inc. v. Pasquan***, No. 1 CA-CV 10-0418. (Az Div 1, March 20, 2012). (judicial foreclosure) "We hold that refinancing a purchase money loan does not destroy purchase money status and forfeit anti-deficiency protection to the extent proceeds from the refinancing transaction are disbursed in satisfaction of the underlying purchase money obligation. We further hold that loan proceeds used to construct a qualifying residence merit anti-deficiency protection under certain circumstances. However, sums disbursed in a loan transaction for non-purchase money purposes may be traced, segregated, and recovered in a deficiency action."



## Assembly Bill 273 - 2014

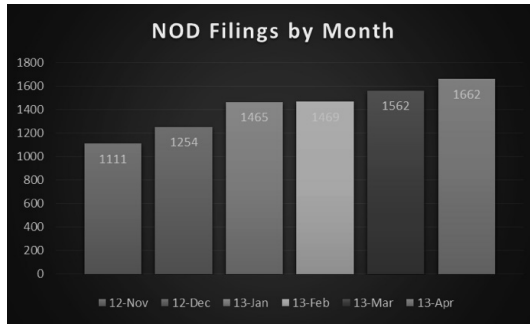
### ***Foreclosure Mediation***

- Automatic enrollment when NOD is recorded.
- To waive participation borrower must:
  - Notify the Mediation Administrator in writing;
  - Fail to pay the mediation fee;
  - Fail to appear for mediation; or
  - No action for 30 days following recording of NOD.



# Current Developments in Nevada Residential Foreclosures

Notices of Default filed  
End of 2012 and Beginning of 2013



MONTHLY RESIDENTIAL FORECLOSURE ANALYSIS OCTOBER 2013

**OCTOBER 2013**  
CITY OF LAS VEGAS  
MONTHLY RESIDENTIAL FORECLOSURE ANALYSIS

**KEY TRENDS**

- After reporting dramatic month-to-month declines in June of 2013, notices of default in the City of Las Vegas (the "City") began to climb in the past two months in advance of the October 1, 2013 effective date of the Homeowners' Bill of Rights (Senate Bill 321). In August, notices of default in the City more than doubled, rising to 305. Compared to a year ago, they remain down 16.3 percent.
- For the 12 months ending August 2013, Ward 6 reported the greatest rate of notices of default with 31 per 1,000 housing units. This was higher than the city-wide rate of 25 per 1,000 housing units.
- Trustee deeds (foreclosures) in the City fell to 147 in August, down 33.2 percent from July 2013. Each ward reported month-to-month declines in the number of foreclosures, except Ward 3, which witnessed an increase of 12.5 percent. For the 12 months ending August, the City reported a foreclosure rate of 11 per 1,000 housing units.

**CLARK COUNTY**  
Notices of Default

**CLARK COUNTY**  
Notices of Trustee Sale

**CLARK COUNTY**  
Trustee Deeds (Foreclosures)

**CITY OF LAS VEGAS**  
Notices of Default

**CITY OF LAS VEGAS**  
Notices of Trustee Sale

**CITY OF LAS VEGAS**  
Trustee Deeds (Foreclosures)

SOUTHERN NEVADA FORECLOSURES	Housing Units <sup>1</sup>	Notices of Default <sup>2</sup>			Notices of Trustee Sale <sup>3</sup>			Trustee Deeds (Foreclosures) <sup>4</sup>		
		Current Month	Totals 12 Months	Rate Per 1,000 Units	Current Month	Totals 12 Months	Rate Per 1,000 Units	Current Month	Totals 12 Months	Rate Per 1,000 Units
City of Las Vegas - Ward 1	23,924	50	569	24	42	470	20	23	286	12
City of Las Vegas - Ward 2	33,896	64	678	20	61	496	14	14	269	8
City of Las Vegas - Ward 3	21,757	48	476	22	48	367	16	27	221	10
City of Las Vegas - Ward 4	39,435	75	895	23	62	627	16	26	395	10
City of Las Vegas - Ward 5	23,446	50	520	26	53	493	21	21	278	12
City of Las Vegas - Ward 6	44,606	99	1,397	31	104	1,000	22	37	588	13
<b>CITY OF LAS VEGAS TOTAL</b>	<b>187,072</b>	<b>386</b>	<b>4,636</b>	<b>25</b>	<b>370</b>	<b>3,433</b>	<b>18</b>	<b>147</b>	<b>2,028</b>	<b>11</b>
<b>Balance of Clark County</b>	<b>466,366</b>	<b>962</b>	<b>11,177</b>	<b>24</b>	<b>840</b>	<b>8,213</b>	<b>18</b>	<b>365</b>	<b>5,047</b>	<b>11</b>
<b>CLARK COUNTY TOTAL</b>	<b>653,438</b>	<b>1,348</b>	<b>15,813</b>	<b>24</b>	<b>1,210</b>	<b>11,746</b>	<b>18</b>	<b>512</b>	<b>7,075</b>	<b>11</b>

<sup>1</sup> Number of Housing Units - The count of dwelling units, regardless of occupancy status, includes single family homes, townhomes, condominiums, plus units, and mobile homes (includes apartments and timeshares), Clark County Assessor and Clark County Comprehensive Planning; <sup>2</sup> Foreclosure Notices of Default - The count of notices of default, breaches and is pending, not all filings/notices result in foreclosure transactions, Clark County Recorder and Applied Analysis; <sup>3</sup> Foreclosure Notice of Trustee Sale - The count of notices of trustee sale and notices of foreclosure sale, not all filings/notices result in foreclosure transactions, Clark County Recorder and Applied Analysis; <sup>4</sup> Trustee Deed (Foreclosure) Transactions - The count of homes that are sold in a trustee sale to a financial institution (e.g., lender or mortgage company), also known as a bank repossession, Clark County Recorder, Clark County Assessor and Applied Analysis.

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## Arizona Foreclosure Status Distribution

**October 2013**

The current distribution of foreclosures based on the number of active foreclosure homes (Realty Trac)

**Auction:**

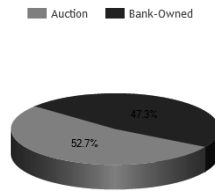
Prior Month	Prior Year
----------------	------------

0.6 %	63.8 %
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**Bank Owned:**

Prior Month	Prior Year
----------------	------------

20.6 %	54.5 %
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## **UPDATE:** National Mortgage Settlement

- Compliance Issues
- New servicing standards
- \$20 billion in relief through principal reductions, short sales and other measures.



**ARIZONA UPDATE:**  
**National Mortgage Settlement**

- HB 2154 - Excluding the \$50,000.00 to be deposited in the **state general fund** pursuant to Laws 2012, chapter 294, section 128, the remainder of the funds received pursuant to the consent judgments in the National Mortgage Settlement is appropriated to the department of law in the fiscal year 2012-2013 for distribution pursuant to applicable court orders.



**AB 300 – Fix-it Bill for 2011 AB 284**

- ***2011 AB 284 – effective October 1, 2011***
  - Additional requirements needed to foreclose on real property (*NRS 107.080*):
    - Required Notarized Affidavit based on personal knowledge of affiant with NOD recording
    - All mortgages and assignments had to be recorded in order to commence foreclosure

716 – NOD's filed in September 2011  
10 – NOD's filed in October 2011

## **AB 300 – Fix-it Bill for 2011 AB 284**

- **AB 300 – effective June 1, 2013**
  - **Section 1 provides that information provided in the affidavit may be based on:**
    - Affiant’s review of business records of the beneficiary of the deed of trust; and
    - Records of the Recorder or the Title Insurance Company that issued the title policy.
  - Requires specific information be provided to the borrower by the party foreclosing on the property.

1,243 – NOD’s filed in April  
2013 1,151 – NOD’s filed in May  
2013 84 – NOD’s filed in June  
2013 476 – NOD’s filed in July  
2013

## **ARS 33-420.01 – HELOC payoffs**

- A secured lender under a revolving line of credit against real property shall suspend the revolving line of credit for a **minimum of forty-five days** on receipt of a request for a payoff demand statement as defined in Section 33-715 from an escrow agent who is licensed pursuant to Title 6, Chapter 7.
- “Suspend” means to forbid the borrower from increasing or incurring any additional debt on the revolving line of credit.

### **ARS 11-1133 – Disclosure of Mortgage Insurance Proceeds**

- B. If a beneficiary of a foreclosed trustee's deed receives the payment based on private mortgage insurance covering the sale that is in addition to the proceeds of the sale, the beneficiary shall submit, in a form approved by the Department of Revenue, to the County Recorder within four months of the trustee's sale a beneficiary's declaration of additional funds received that contains the following:
  - Tax parcel number
  - name and address of the beneficiary
  - date of the trustee's sale
  - Highest bid amount received at the trustee's sale
  - The recording number of the trustee's deed upon sale.
  - The amount of any additional compensation received by the beneficiary within six months after the date of the trustee's sale.

### **ARS 33-1331 – Disclosure to tenant of pending foreclosure**

- **Rental agreement after the foreclosure initiated** : the owner shall include written notice of possible foreclosure with the rental agreement with the tenant.
- **Rental agreement before the foreclosure initiated**: the owner shall provide the tenant with written notice within five business days after receipt of the notice of trustee's sale.
- If the owner fails to provide the notice as prescribed in this section the tenant may deliver a written notice as prescribed in this section the tenant may deliver a written notice pursuant to section 33-1361 and recover damages and obtain injunctive relief. The security deposit shall be returned to the tenant.
- This section shall not apply to multifamily residential rental units consisting of four or more connected units.

## **Arizona Exemptions Increased**

- Amended sections 33-1123, 33-1125, 33-1126, and 33-1130. Arizona revised statutes: related to personal property exemptions.
- 33-1123 - household furniture, furnishings, goods, appliances and consumer electronic devices (from \$4,000 to \$6,000)
- 33-1125 - Personal items (clothing, etc), vehicle (\$6,000), library, etc.
- 3-1126 - Money benefits or proceeds; exception
- 33-1130 - Tools and equipment used in a commercial activity, trade, business or profession(from \$2,500 to \$5,000)