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### Renfroe v. Lakeview Loan Serv., L.L.C., 133 Nev. Adv. Op. 50 (July 27, 2017)

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CIVIL APPEAL: GENERAL

**Summary**

The Court determined that the NRS 116.3116 provisions that grant homeowners' associations (HOAs) superpriority lien status for delinquent HOA dues are not preempted by federal law when the first deed of trust on the property in question is insured through the Federal Housing Administration (FHA). The FHA insurance program at issue contemplates HOA lien priority schemes like NRS 116.3116 specifically. Mortgagees can comply with relevant state and federal law without stifling the purpose of the federal law, and therefore, preemption does not apply.

**Background**

In 2008, Brian and Jennifer Ferguson purchased a home in Las Vegas. The home mortgage was insured by the Department of Housing and Urban Development (HUD) through the FHA's Single Family Mortgage Program and was eventually assigned to Lakeview Loan Servicing, LLC (Lakeview).

In 2013, the Fergusons' HOA foreclosed on the relevant property under NRS 116.3116. On April 18, 2014, Kenneth Renfroe purchased the property at a foreclosure sale and then filed an action to quiet title to the property. Lakeview filed a motion to dismiss the action for quiet title. The district court granted the motion to dismiss. Renfroe appealed the district court's finding.

**Discussion**

*Preemption doctrine*

The Supremacy Clause of the United States Constitution dictates that United States federal law is supreme, and that each state is bound by federal law, notwithstanding conflicting state law.<sup>2</sup> State laws cannot conflict with federal laws; such conflicting laws are thus preempted by federal law and are without effect.<sup>3</sup>

Federal law can expressly preempt state law when a statute explicitly states the intent to override state law or impliedly preempt state law.<sup>4</sup> Implied preemption occurs when either federal law fully occupies an area such that there is little room for state regulation (field preemption), or when state and federal law are in conflict such that: 1) an individual cannot comply with both, or 2) when the state law stymies the federal law's purpose.<sup>5</sup> The parties agreed that neither express

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<sup>1</sup> By Christopher Kelly.

<sup>2</sup> U.S. CONST. art. VI, cl. 2.

<sup>3</sup> *Altria Grp., Inc. v. Good*, 555 U.S. 70, 76 (2008).

<sup>4</sup> *Nanopierce Techs., Inc. v. Depository Tr. & Clearing Corp.*, 123 Nev. 362, 370, 168 P.3d 73, 79 (2007).

<sup>5</sup> *Id.* at 370–372, 79–80.

nor field preemption apply in this case, and therefore, the Court reviewed whether conflict preemption applied.

### *NRS 116.3116*

Under Nevada law, HOAs have the right to nonjudicially initiate foreclosure on property and to have superpriority liens on property for up to the amount of nine months of delinquent HOA fees.<sup>6</sup> Foreclosure on the lien “extinguishes a first deed of trust” on the property in question and is a true priority lien.<sup>7</sup>

### *The FHA insurance program*

The FHA insurance program enables increased investment in housing by insuring home loans of low and middle-income individuals, which encourages private lenders to offer loans to those individuals.<sup>8</sup> The program values borrowers retaining ownership and requires exploration of nonforeclosure options in the event of borrower default.<sup>9</sup>

HUD has made clear that mortgagee’s are responsible for insulating HUD’s interest in the property (as insurer) from HOA foreclosure, and also outlined that HUD will reimburse HOA fees paid by the lender in order to avoid foreclosure.<sup>10</sup>

### *NRS 116.3116 is not preempted by the FHA insurance program*

The Court noted that the United States District Court for the District of Nevada has clearly rejected that the FHA program and NRS 116.3116 are in conflict.<sup>11</sup> The Court agreed with the district court’s finding that there was no conflict between the federal and state laws in this case. The relevant NRS provisions should not deter low-income loaning under the program because lenders are fully reimbursed for lender-paid HOA dues. Lakeview’s argument that Nevada law subverts the FHA’s interest in exploration of non-foreclosure options also failed because lenders are directed to pay HOA dues to avoid HOA foreclosure. The FHA program considered statutory schemes like NRS 116.3116, and therefore, there was no conflict preemption in this case.

## **Conclusion**

The Court, sitting en banc, reversed and remanded the district court’s dismissal of Renfroe’s action for quiet title to the property for further proceedings. The FHA insurance program did not preempt NRS 116.3116’s provisions regarding HOA lien priority status. HUD specifically contemplates HOA foreclosures and instructs mortgagees on how to insulate property in the FHA

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<sup>6</sup> NEV. REV. STAT. § 116.31162–.31168 (2017); NEV. REV. STAT. § 116.3116(2) (2015).

<sup>7</sup> SFR Invs. Pool 1 v. U.S. Bank, 130 Nev. Adv. Op. 75, 334 P.3d 408, 409 (2014).

<sup>8</sup> Sec’y of Hous. & Urban Dev. v. Sky Meadow Ass’n, 117 F. Supp. 2d 970, 980 (C.D. Cal. 2000).

<sup>9</sup> 24 C.F.R. § 203.501 (2015).

<sup>10</sup> OFFICE OF THE ASSISTANT SEC’Y FOR BUS., U.S. DEP’T OF HOUS. AND URBAN DEV., MORTGAGEE LETTER 2013-18, UPDATED CLARIFICATION REGARDING TITLE APPROVAL AT CONVEYANCE, 2013 WL 2448985, at 2–3 (2013).

<sup>11</sup> See Freedom Mortg. Corp. v. Las Vegas Dev. Grp., L.L.C., 106 F. Supp. 3d 1174, 1184 (D. Nev. 2015).

program from HOA foreclosure. If mortgagees follow HUD directives, none of the provisions of NRS 116.3116 will conflict with the FHA program, and therefore, NRS 116.3116 was not preempted.