RESIDENTIAL
FORECLOSURE ANALYSIS

August 2011

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Submitted At Meeting
by MIKE BAUSE
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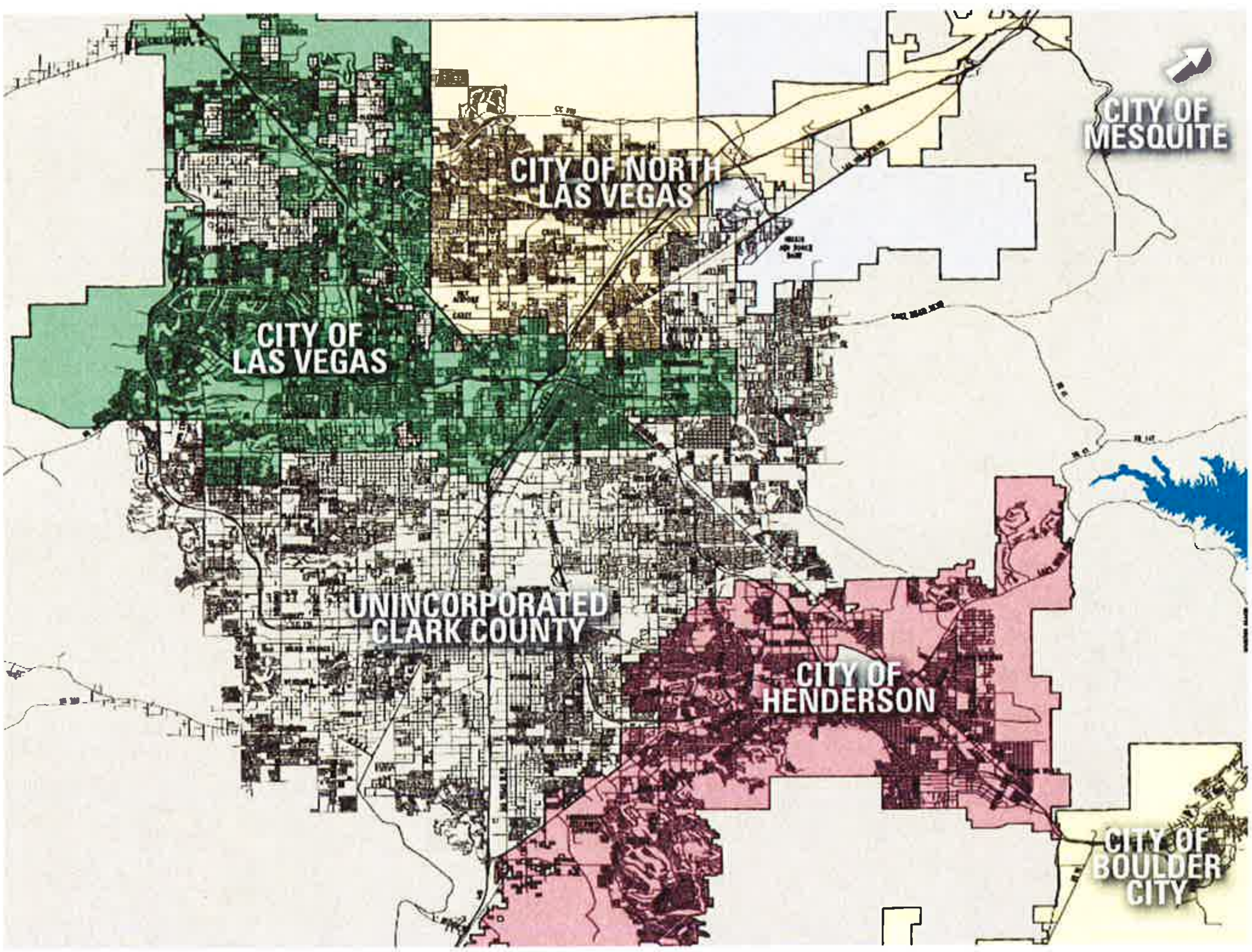
FORECLOSURE RANKINGS BY Jurisdiction

Rankings (1 = Highest Rate)

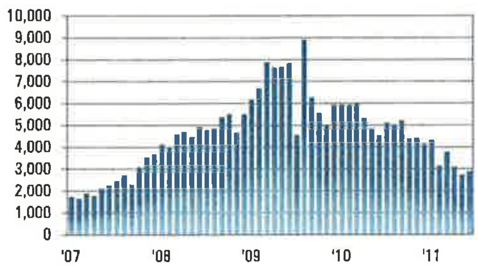
SOUTHERN NEVADA FORECLOSURE RANKINGS	Rate of Notices of Default			Rate of Trustee Deeds (Foreclosures)		
	Current Month	Trailing 3 Months	Trailing 12 Months	Current Month	Trailing 3 Months	Trailing 12 Months
City of Las Vegas	3	3	3	3	3	3
City of Henderson	4	4	4	4	4	4
City of North Las Vegas	2	1	1	1	1	1
City of Mesquite	5	5	5	5	5	5
City of Boulder City	6	6	6	6	6	6
Unincorporated Clark County	1	2	2	2	2	2

SOUTHERN NEVADA Jurisdictions

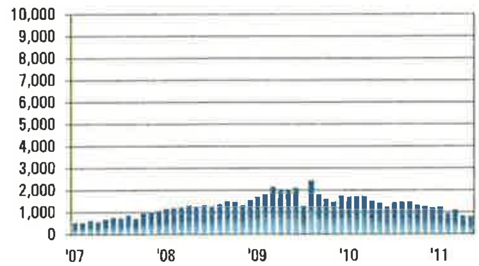


FORECLOSURE ACTIVITY BY **Jurisdiction**

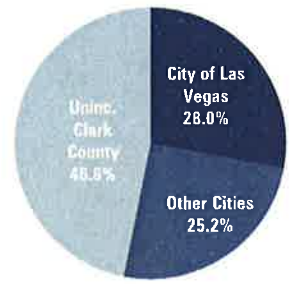
Clark County:
NOTICES OF DEFAULT



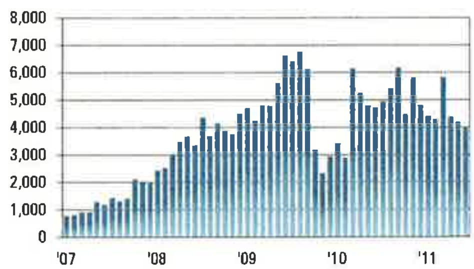
City of Las Vegas:
NOTICES OF DEFAULT



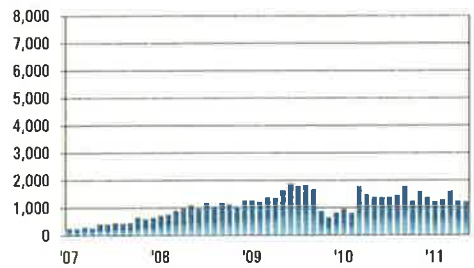
Distribution:
NOTICES OF DEFAULT



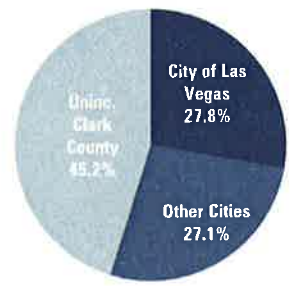
Clark County:
NOTICES OF TRUSTEE SALE



City of Las Vegas:
NOTICES OF TRUSTEE SALE



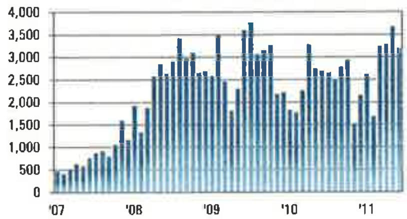
Distribution:
NOTICES OF TRUSTEE SALE



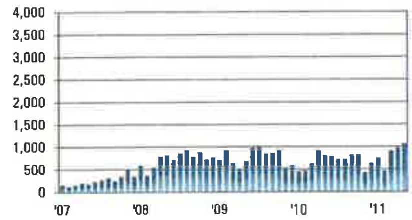
PRE-FORECLOSURE ACTIVITY	Incorporated Cities					Unincorp. Clark County	Total Clark County
	Las Vegas	Henderson	North Las Vegas	Mesquite	Boulder City		
Housing Units							
Number of Housing Units	184,629	95,726	69,143	8,368	6,687	281,580	646,133
As a % of Total Housing Units	28.6%	14.8%	10.7%	1.3%	1.0%	43.6%	100.0%
Notices of Default							
Current Month	805	394	304	17	11	1,347	2,878
Trailing 3 Months	2,397	1,229	1,008	52	29	3,957	8,672
Trailing 12 Months	13,708	6,558	6,034	281	153	21,427	48,161
Notices of Default (As a % of Total)							
Current Month	28.0%	13.7%	10.6%	0.6%	0.4%	46.8%	100.0%
Trailing 3 Months	27.6%	14.2%	11.6%	0.6%	0.3%	45.6%	100.0%
Trailing 12 Months	28.5%	13.6%	12.5%	0.6%	0.3%	44.5%	100.0%
Rate of Default Notices	(X Per 1,000 Housing Units)						
Current Month	4.4	4.1	4.4	2.0	1.6	4.8	4.5
Trailing 3 Months	13.0	12.8	14.6	6.2	4.3	14.1	13.4
Trailing 12 Months	74.2	68.5	87.3	33.6	22.9	76.1	74.5
Notices of Trustee Sale							
Current Month	1,100	542	507	14	8	1,788	3,959
Trailing 3 Months	3,541	1,652	1,652	55	34	5,578	12,512
Trailing 12 Months	16,504	7,289	7,891	275	159	26,481	58,599
Notices of Trustee Sale (As a % of Total)							
Current Month	27.8%	13.7%	12.8%	0.4%	0.2%	45.2%	100.0%
Trailing 3 Months	28.3%	13.2%	13.2%	0.4%	0.3%	44.6%	100.0%
Trailing 12 Months	28.2%	12.4%	13.5%	0.5%	0.3%	45.2%	100.0%
Rate of Notices of Trustee Sale	(X Per 1,000 Housing Units)						
Current Month	6.0	5.7	7.3	1.7	1.2	6.3	6.1
Trailing 3 Months	19.2	17.3	23.9	6.6	5.1	19.8	19.4
Trailing 12 Months	89.4	76.1	114.1	32.9	23.8	94.0	90.7

FORECLOSURE ACTIVITY BY Jurisdiction

Clark County:
TRUSTEE DEEDS (Foreclosures)

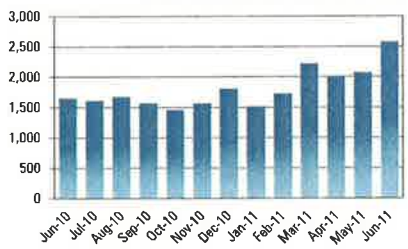


City of Las Vegas:
TRUSTEE DEEDS (Foreclosures)

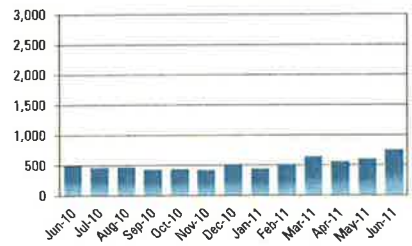


Past Month:
MEDIAN PRICE OF FORECLOSURE/REO SALES

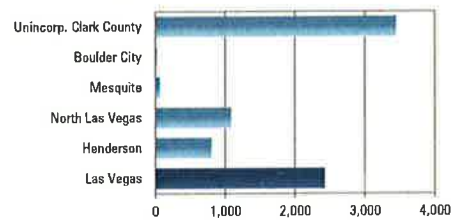
Clark County:
FORECLOSURE SALES (REOs)



City of Las Vegas:
FORECLOSURE SALES (REOs)



Past Month:
UNLISTED BANK-OWNED PROPERTIES

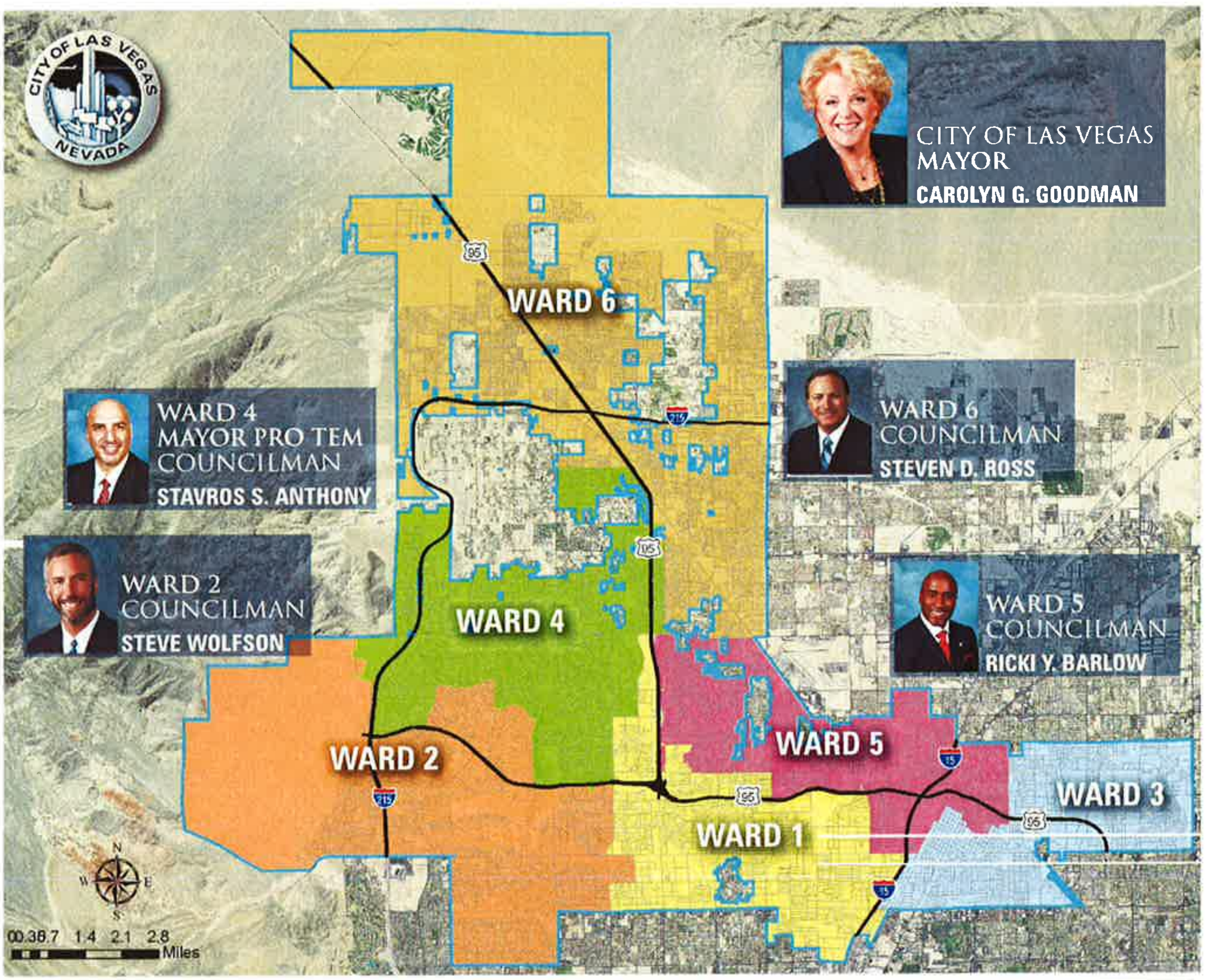


FORECLOSURE ACTIVITY	Incorporated Cities					Unincorp.	Total
	Las Vegas	Henderson	North Las Vegas	Mesquite	Boulder City	Clark County	Clark County
Housing Units							
Number of Housing Units	184,629	95,726	69,143	8,368	6,687	281,580	646,133
As a % of Total Housing Units	28.6%	14.8%	10.7%	1.3%	1.0%	43.6%	100.0%
Trustee Deeds (Foreclosures)							
Current Month	874	414	449	22	14	1,429	3,202
Trailing 3 Months	2,920	1,259	1,386	64	29	4,489	10,147
Trailing 12 Months	9,219	3,980	4,375	191	79	14,395	32,239
Trustee Deeds (Forecl.) (As a % of Total)							
Current Month	27.3%	12.9%	14.0%	0.7%	0.4%	44.6%	100.0%
Trailing 3 Months	28.8%	12.4%	13.7%	0.6%	0.3%	44.2%	100.0%
Trailing 12 Months	28.6%	12.3%	13.6%	0.6%	0.2%	44.7%	100.0%
Rate of Trustee Deeds (Foreclosures)	(X Per 1,000 Housing Units)						
Current Month	4.7	4.3	6.5	2.6	2.1	5.1	5.0
Trailing 3 Months	15.8	13.2	20.0	7.6	4.3	15.9	15.7
Trailing 12 Months	49.9	41.6	63.3	22.8	11.8	51.1	49.9
Foreclosure Sales (REOs)							
Current Month	750	300	321	16	11	1,176	2,574
Trailing 3 Months	1,904	797	881	45	25	3,003	6,655
Trailing 12 Months	6,230	2,653	2,972	156	66	9,716	21,793
Foreclosure Sales (REOs) (As a % of Total)							
Current Month	29.1%	11.7%	12.5%	0.6%	0.4%	45.7%	100.0%
Trailing 3 Months	28.6%	12.0%	13.2%	0.7%	0.4%	45.1%	100.0%
Trailing 12 Months	28.6%	12.2%	13.6%	0.7%	0.3%	44.6%	100.0%
Median Price of Foreclosure/REO Sales							
Current Month	$90,434	$132,000	$100,000	$68,000	$147,500	$103,000	$102,000
Trailing 3 Months	$94,924	$135,000	$98,500	$92,000	$147,500	$103,000	$103,000
Trailing 12 Months	$96,000	$140,000	$104,000	$110,000	$148,000	$108,000	$108,000

FORECLOSURE RANKINGS BY **Ward**

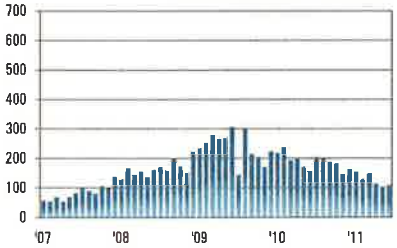
LAS VEGAS WARD FORECLOSURE RANKINGS	Rate of Notices of Default			Rate of Trustee Deeds (Foreclosures)		
	Current Month	Trailing 3 Months	Trailing 12 Months	Current Month	Trailing 3 Months	Trailing 12 Months
Ward 1	6	6	6	6	6	6
Ward 2	5	4	5	5	5	5
Ward 3	1	1	2	3	2	2
Ward 4	4	5	4	4	4	4
Ward 5	3	3	3	2	3	3
Ward 6	2	2	1	1	1	1

CITY OF LAS VEGAS **Wards**

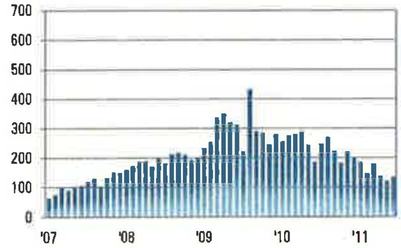


FORECLOSURE ACTIVITY BY **Ward**

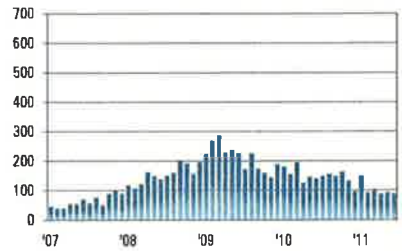
Ward 1:
NOTICES OF DEFAULT



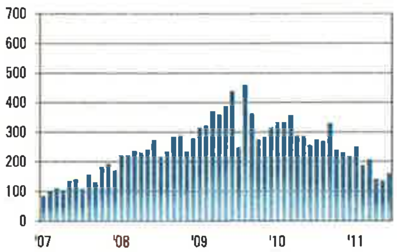
Ward 2:
NOTICES OF DEFAULT



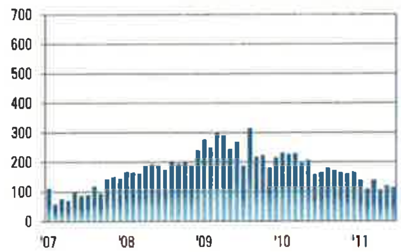
Ward 3:
NOTICES OF DEFAULT



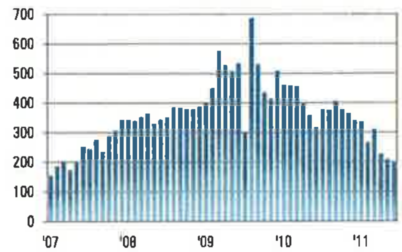
Ward 4:
NOTICES OF DEFAULT



Ward 5:
NOTICES OF DEFAULT



Ward 6:
NOTICES OF DEFAULT



PRE-FORECLOSURE ACTIVITY	Ward 1	Ward 2	Ward 3	Ward 4	Ward 5	Ward 6	Total City of Las Vegas
Housing Units							
Number of Housing Units	24,289	33,733	21,842	39,246	23,487	42,374	184,629
As a % of Total Housing Units	13.2%	18.3%	11.8%	21.3%	12.7%	23.0%	100.0%
Notices of Default							
Current Month	88	135	115	160	109	198	805
Trailing 3 Months	269	394	341	436	324	633	2,397
Trailing 12 Months	1,459	2,248	1,738	2,645	1,831	3,787	13,708
Notices of Default (As a % of Total)							
Current Month	10.9%	16.8%	14.3%	19.9%	13.5%	24.6%	100.0%
Trailing 3 Months	11.2%	16.4%	14.2%	18.2%	13.5%	26.4%	100.0%
Trailing 12 Months	10.6%	16.4%	12.7%	19.3%	13.4%	27.6%	100.0%
Rate of Default Notices	(X Per 1,000 Housing Units)						
Current Month	3.6	4.0	5.3	4.1	4.6	4.7	4.4
Trailing 3 Months	11.1	11.7	15.6	11.1	13.8	14.9	13.0
Trailing 12 Months	60.1	66.6	79.6	67.4	78.0	89.4	74.2
Notices of Trustee Sale							
Current Month	128	171	150	226	123	302	1,100
Trailing 3 Months	385	582	468	678	448	980	3,541
Trailing 12 Months	1,729	2,814	2,151	3,107	2,168	4,535	16,504
Notices of Trustee Sale (As a % of Total)							
Current Month	11.6%	15.5%	13.6%	20.5%	11.2%	27.5%	100.0%
Trailing 3 Months	10.9%	16.4%	13.2%	19.1%	12.7%	27.7%	100.0%
Trailing 12 Months	10.5%	17.1%	13.0%	18.8%	13.1%	27.5%	100.0%
Rate of Notices of Trustee Sale	(X Per 1,000 Housing Units)						
Current Month	5.3	5.1	6.9	5.8	5.2	7.1	6.0
Trailing 3 Months	15.9	17.3	21.4	17.3	19.1	23.1	19.2
Trailing 12 Months	71.2	83.4	98.5	79.2	92.3	107.0	89.4

FORECLOSURE ACTIVITY BY **Ward**

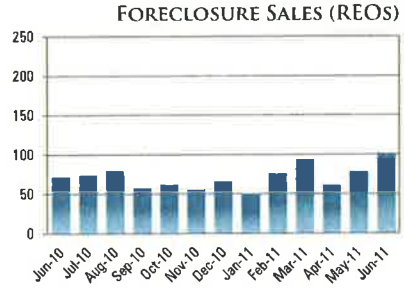
Ward 1:
FORECLOSURE SALES (REOs)

Ward 2:
FORECLOSURE SALES (REOs)

Ward 3:
FORECLOSURE SALES (REOs)

Ward 4:
FORECLOSURE SALES (REOs)

Ward 5:
FORECLOSURE SALES (REOs)

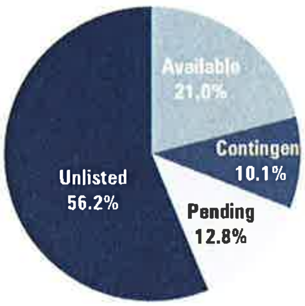


Ward 6:
FORECLOSURE SALES (REOs)

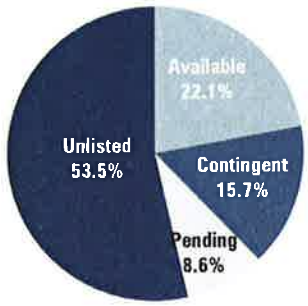
FORECLOSURE ACTIVITY	Ward 1	Ward 2	Ward 3	Ward 4	Ward 5	Ward 6	Total City of Las Vegas
Housing Units							
Number of Housing Units	24,289	33,733	21,842	39,246	23,487	42,374	184,629
As a % of Total Housing Units	13.2%	18.3%	11.8%	21.3%	12.7%	23.0%	100.0%
Trustee Deeds (Foreclosures)							
Current Month	82	128	114	175	126	249	874
Trailing 3 Months	274	455	404	579	398	810	2,920
Trailing 12 Months	938	1,456	1,277	1,787	1,250	2,511	9,219
Trustee Deeds (Forecl.) (As a % of Total)							
Current Month	9.4%	14.6%	13.0%	20.0%	14.4%	28.5%	100.0%
Trailing 3 Months	9.4%	15.6%	13.8%	19.8%	13.6%	27.7%	100.0%
Trailing 12 Months	10.2%	15.8%	13.9%	19.4%	13.6%	27.2%	100.0%
Rate of Trustee Deeds (Foreclosures)	(X Per 1,000 Housing Units)						
Current Month	3.4	3.8	5.2	4.5	5.4	5.9	4.7
Trailing 3 Months	11.3	13.5	18.5	14.8	16.9	19.1	15.8
Trailing 12 Months	38.6	43.2	58.5	45.5	53.2	59.3	49.9
Foreclosure Sales (REOs)							
Current Month	66	118	101	138	89	238	750
Trailing 3 Months	184	317	238	358	237	570	1,904
Trailing 12 Months	618	993	846	1,222	835	1,716	6,230
Foreclosure Sales (REOs) (As a % of Total)							
Current Month	8.8%	15.7%	13.5%	18.4%	11.9%	31.7%	100.0%
Trailing 3 Months	9.7%	16.6%	12.5%	18.8%	12.4%	29.9%	100.0%
Trailing 12 Months	9.9%	15.9%	13.6%	19.6%	13.4%	27.5%	100.0%
Median Price of Foreclosure/REO Sales							
Current Month	$58,500	$130,100	$50,000	$113,500	$46,900	$105,700	$90,434
Trailing 3 Months	$60,000	$137,702	$49,950	$113,938	$51,850	$110,500	$94,924
Trailing 12 Months	$67,750	$148,500	$54,000	$113,750	$56,900	$119,000	$96,000

FORECLOSURE ACTIVITY BY **Ward**

Ward 1:
LISTED STATUS OF BANK-OWNED PROPERTIES (REOs)

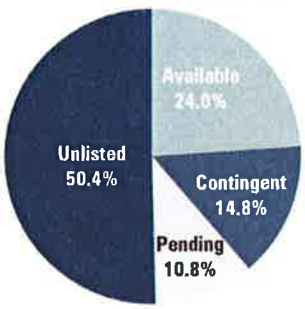


Ward 2:
LISTED STATUS OF BANK-OWNED PROPERTIES (REOs)

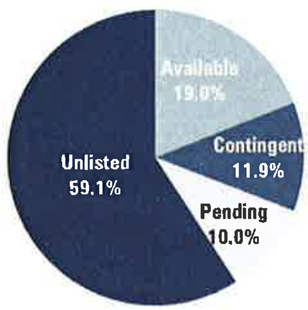


Ward 3:
LISTED STATUS OF BANK-OWNED PROPERTIES (REOs)

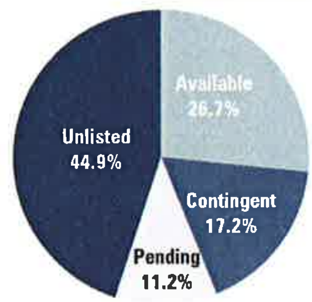
Ward 4:
LISTED STATUS OF BANK-OWNED PROPERTIES (REOs)



Ward 5:
LISTED STATUS OF BANK-OWNED PROPERTIES (REOs)



Ward 6:
LISTED STATUS OF BANK-OWNED PROPERTIES (REOs)



INVENTORY ANALYSIS	Ward 1	Ward 2	Ward 3	Ward 4	Ward 5	Ward 6	Total City of Las Vegas
Housing Units							
Number of Housing Units	24,289	33,733	21,842	39,246	23,487	42,374	184,629
As a % of Total Housing Units	13.2%	18.3%	11.8%	21.3%	12.7%	23.0%	100.0%
Bank-Owned Properties (REOs)							
Number of Bank-Owned Properties	666	648	601	804	672	1,035	4,426
As a % of Total Housing Units	2.7%	1.9%	2.8%	2.0%	2.9%	2.4%	2.4%
Listed Status of REOs							
Available in the MLS	140	143	61	193	128	276	941
Contingent in the MLS	67	102	41	119	80	178	587
Pending in the MLS	85	56	64	87	67	116	475
Unlisted	374	347	435	405	397	465	2,423
Total	**666**	**648**	**601**	**804**	**672**	**1,035**	**4,426**
Listed Status of REOs (As a % of Total)							
Available in the MLS	14.9%	15.2%	6.5%	20.5%	13.6%	29.3%	100.0%
Contingent in the MLS	11.4%	17.4%	7.0%	20.3%	13.6%	30.3%	100.0%
Pending in the MLS	17.9%	11.8%	13.5%	18.3%	14.1%	24.4%	100.0%
Unlisted	15.4%	14.3%	18.0%	16.7%	16.4%	19.2%	100.0%
Total	**15.0%**	**14.6%**	**13.6%**	**18.2%**	**15.2%**	**23.4%**	**100.0%**
Distribution of Listed Status of REOs							
Available in the MLS	21.0%	22.1%	10.1%	24.0%	19.0%	26.7%	21.3%
Contingent in the MLS	10.1%	15.7%	6.8%	14.8%	11.9%	17.2%	13.3%
Pending in the MLS	12.8%	8.6%	10.6%	10.8%	10.0%	11.2%	10.7%
Unlisted	56.2%	53.5%	72.4%	50.4%	59.1%	44.9%	54.7%
Total	**100.0%**	**100.0%**	**100.0%**	**100.0%**	**100.0%**	**100.0%**	**100.0%**

COMMENTS TO THE CITY OF LAS VEGAS

COMMENTS FROM NEVADA STATE BANK REGARDING PROPOSED ORDINANCE TO ADOPT A REGISTRATION AND MAINTENANCE PROGRAM FOR PROPERTIES THAT ARE THE SUBJECT OF FORECLOSURE AND RELATED PROCEEDINGS

Nevada State Bank, by and through its attorneys Jolley Urga Wirth Woodbury & Standish, hereby submits comments in connection with the proposed ordinance amending Title 16 of the Municipal Code of the City of Las Vegas to add a new chapter, designated as Chapter 33.

OVERVIEW OF COMMENTS

Nevada State Bank is sensitive to and understands the concerns raised by the City and underlying the proposed ordinance. Because the bank could become the fee title owner of a residential property by enforcement of its security interest, we are interested in learning about proposed abatements and penalties as early as possible. We would welcome the opportunity to remedy those situations within our control prior to any government entity undertaking remediation or abatement steps. We are concerned; however, that while a government entity has the benefits of both police power and government immunity, there is no equivalent for a private lender. Neither the law nor a lender's loan documents authorize a lender to take control of real property before some form of foreclosure mechanism has taken place. We therefore urge that the language of the ordinance, and the mechanism for implementation, be cognizant of those limitations on a private lender.

SECTION 16.33.020 WORDS AND PHRASES

In connection with the definition of "notice of default", it should be noted that a non-judicial foreclosure is commenced by the mailing and recording of a Notice of Breach and Election to Sell on behalf of the lender (this document is sometimes referred to as the Notice of Default). It is, however, the combined mailing and recording of the Notice of Default that begins the foreclosure process. The use of the word "or" before "has been recorded in the County Recorder's Office" should therefore be replaced with the word "and".

In connection with the phrase "specified property", subsection (B) states "concerning which a notice of default has been filed." The word "filed", however, should be replaced with the word "recorded". We are also concerned that the way the phrase "specified property" is described would include both property in which a lender had a possessory interest and no possessory interest. A lender holding a "security" interest in real property is far different than holding an "ownership" interest (such as a fee title holder) or a "possessory" interest (such as a lessee). Many of the goals of the proposed ordinance, such as the right to enter upon, secure and maintain property, are legally impermissible unless one holds an ownership or possessory interest in the property. There is no legal authority to allow, or

Submitted At Meeting
by CHARLES COOK
Date 11/1/11 Item #5

require, the holder of the security interest in real property to take physical possession or control of the property.

SECTION 16.33.030

The language in sub-section (A) is too broad in that it would require inspection and possible registration of properties prior to the mailing and recordation of the notice of default. Inspection and potential registration of property should not be required unless there has in fact been a notice of default recorded. Otherwise, merely missing a payment would subject the property owner to its property being inspected and potentially registered. Once a notice of default has been recorded, the property could be "inspected". Such an inspection, however, would necessarily have to be cursory in that the secured lender has no right to enter upon the real property without the consent of the owner. Doing so would be a trespass and could subject a secured lender to liability. An inspection "from the curb" could be performed by or on behalf of a secured lender. Such an inspection, however, would not reveal whether the property was occupied by the mortgagor or by persons who were occupying the property with the mortgagor's consent. Such an inspection could possibly determine if the property was unoccupied at the moment of inspection but would have no way of delving into the intentions of the borrower or whether the occupant was only temporarily absent from the property. Nor could such an inspection determine the "lawfulness" of such occupation. Determining if a property was vacant or "not presently occupied by persons lawfully entitled thereto" is not something that a secured lender is in a position to do. Such an inspection could perhaps be completed under the government entities' police power or by the Department of Building and Safety in this case.

Subsection (A) also requires that the "mortgagor" shall designate in writing a property manager to inspect, maintain and secure the property. This is certainly information available to the "mortgagor" as the owner of the property. If however the ordinance was intended to read "mortgagee shall designate", then that is a problem. As discussed above, a secured lender is not legally entitled to take steps to secure or maintain the property until the lender has gone through the steps of foreclosure and either become the owner or otherwise obtained some form of possessory interest in the real property.

In connection with subsection (B), the same concern exists. The secured lender could certainly provide information relating to the name, address and contact number for the borrower based on the information in its file. A secured lender, however, would have no authority to appoint a property manager to inspect, maintain or secure the property, because the secured lender itself does not have that power.

In connection with subsection (C), if the property manager designated was the borrower's property manager, the lender may not have that information and would have no control over such property manager's qualifications. Not until the property had gone through the foreclosure process or was otherwise under the ownership and control of the secured lender could identification of the property manager retained by the lender be provided.

In connection with subsection (D), the time frames for the obligations listed in subsection (A) are too brief. Under NRS 107.080, et seq., a borrower generally has 35 days from the recording of the Notice of Breach to cure a default before the lender can accelerate the loan. If the combined period for the inspection and the registration was changed to be no longer than 40 days after the Notice of Breach is recorded, that would eliminate false starts or false registrations.

In connection with subsection (E), the proposed ordinance states, with respect to each specified property, the mortgagee and its designated property manager shall be responsible for inspecting and maintaining the property on a monthly basis until the parcel no longer qualifies under the definition of specified property. However, the law only allows an owner (the holder of the fee title interest), or another with a possessory interest in the property (such as a tenant) to "maintain and secure" the property. The lender, as a mere holder of a security interest, does not generally have the right to enter upon, maintain or secure the property. (In some instances, depending on the loan documentation, the lender may be provided with an optional right to prevent waste of the property; however, those terms vary with the different loan documents and usually are limited to curing monetary defaults, such as placement of insurance and payment of taxes, not on-site maintenance work.) As such, it is our view that the lender would not be the party with the right to "maintain and secure" the property unless and until their foreclosure or other mechanism had taken place, vesting them as the owner and fee title holder of the property.

Certainly the City could impose some form of obligation upon an "Owner" of a property. This would include a lender once the lender became an "Owner" through a foreclosure or other mechanism. The City, through its police powers, may have the right to enter upon and secure real property with impunity, but a private lender does not.

A lender would of course appreciate receiving notice from the City of its intention to enter upon and secure the property and otherwise abate what troubles may be found there, especially if that lender is about to become an owner of that property through foreclosure. If a pre-assessment and pre-abatement notice was sent to a lender prior to them becoming the owner, it may, depending upon the circumstances of the property, be able to take some remedial steps. However, to be required by this ordinance to engage in activity that is beyond the lender's legal rights, would simply subject the lenders to liability to owners and other third parties. We know of no law or legal principal that would allow a secured lender to undertake the acts of securing and maintaining the property as described in subsection 16.33.060 of the proposed ordinance. Likewise, we know of no legally permissible mechanism to allow the City to indemnify a lender or otherwise provide a safe harbor from such liability. Subsection 16.33.060 provides a series of items of repair and maintenance to the building and landscaping that would be permissible only to an owner of the property.

In addition to these legal concerns, we also have some practical concerns in connection with subsection 16.33.060. If a property is identified as having dying landscape and the utilities have been turned off, it may not be possible for the lender to get the utilities turned back on. Likewise, it may not be advisable to turn on electricity and water unless the property has been secured and the interior of the property (in terms of light fixtures, plumbing fixtures, etc.) is suitable for the turn-on of the utilities. For example, if the interior of the property has been stripped of all plumbing fixtures, turning the water on would simply flood the interior of the building. Similarly, if the property had been stripped of lighting fixtures, turning the electricity on could cause an electrical fire or worse.

Entering upon property and changing the locks to secure the property could cause civil liability as well as potential breach of the peace.

THE POWERS OF THE CITY

NRS 266.105 allows the City Council to "make and pass all ordinances, resolutions and orders, not repugnant to the Constitutions of the United States or of the State of Nevada . . . necessary for the municipal government and the management of the city affairs . . . ." The statute also grants the City Council power to provide for fines or penalties to enforce such ordinances.

NRS 266.335 deals with the abatement, prevention and removal of Nuisances and allows certain lien rights for the City. The statute provides, in part, that the City Council may:

1. Determine by ordinance what shall be deemed nuisances.

2. Provide for the abatement, prevention and removal of the nuisances <u>at the expense of the person creating, causing or committing the nuisances</u>.

3. Provide that the expense of removal is a lien upon the property upon which the nuisance is located.

4. Provide any other penalty or punishment of <u>persons responsible</u> for the nuisances.

It cannot be disputed that "the person creating, causing or committing the nuisance" must be the owner of the property (or its agent), not the lender. If, and when, the lender becomes an owner of the property, it may then become the responsible party, but not before.

The proposed ordinance puts the cart before the horse and imposes an obligation and liability on a mortgage lender for matters totally beyond the lender's control and over matters which the lender has no legal right to address.

NUISANCE LAWS

NRS 40.140 defines nuisance and provides for actions for abatement and damages. The problems with vacant residences as discussed in the proposed ordinances may fall within the statutory definition of a nuisance. But, if that is the case, then such nuisance may be "the subject of an action". Under the statute, the <u>action</u> may be brought by any person whose property is injuriously affected or whose personal enjoyment is lessened by the nuisance, and by the judgment the nuisance may be enjoined or abated, as well as damages recovered. The concept of an "action" carries with it notice and an opportunity to be heard and contemplates that a judgment would be entered following such notice and fair hearing. The City may not by edict, or ordinance, omit that process.

To impose criminal penalties on a lender for a nuisance created on property not owned or otherwise within the legal control of the lender is violative of fundamental premises of due process. In substance, it is improper to fine or penalize a lender for not doing something it has no legal right to do.

BANKRUPTCY CONSIDERATIONS

The proposed ordinance's requirement that the lender and/or its property manager maintain the "specific property" pre-foreclosure is problematic in a bankruptcy context. Whether the automatic stay is violated under 11 USC 362 in these situations may depend on whether the property preservation could be construed as enforcing a claim against the debtor or estate. Changing the locks may violate the stay because it would deprive the debtor of access to the property of the estate. If windows and doors are intact or not completely broken out, then boarding up the house may be construed as the lender enforcing its security interest in violation of the stay.

MORTGAGEE IN POSSESSION

The proposed ordinance would force the lender to do what it is not otherwise legally authorized to do and would force it to become a mortgagee in possession. Once a lender takes control of property all of the incidents/liability of ownership may attach to the lender. There is no Nevada law or statute which would mandate that a lender take title to the property and have the corresponding detriment of ownership. A lender can arguably walk away from the collateral and not foreclose. In fact, there is an exception to Nevada's one action rule (NRS 40.430) where there is the presence of environmental conditions which the lender was not aware of at the time of making the loan. In that case the lender may forego its security interest in the property and sue the borrower on the debt. This statute recognizes that if environmental conditions are present on a property, and the lender was obligated to step in and take possession, such actions would create additional liability for the lender under applicable federal statutes allocating responsibility for clean up.

POSSIBLE WRONGFUL LOCKOUT

If a lender incorrectly determines that a property has been abandoned or is vacant and seeks to secure possession by changing the locks, etc., this may give rise to claims by the borrower against the lender for wrongful dispossession of the premises. In this regard there is no safe harbor provided by the proposed ordinance relative to claims by the owners of the property. The proposed ordinance provides no express protection for the lender who acts in furtherance of the directives of the ordinance with reasonable good faith. This is highlighted by the language of the proposed ordinance requiring a lender to determine whether the property is "not presently occupied by persons lawfully entitled thereto". The risk of an incorrect determination in this regard puts an unreasonable burden upon a lender.

RECEIVERSHIPS

The proposed ordinance provides no alternative or safe harbors for a lender. What if a receiver is appointed? In that case, the receiver is acting as the agent of the court and has effectively been given control of the property by the court. The ordinance should not conflict with the rights of a court appointed receiver.

CONCLUSION

A lender generally would find acceptable the requirement that it provide notice to the City when it commences foreclosure by the recording of a Notice of Default. However, the obligation to determine if a property is vacant and then secure and maintain the property is not reasonable. If the City chooses to make a determination that the property is vacant or abandoned and chooses to engage in some abatement actions, the lender would certainly appreciate learning of that determination and the opportunity to conduct the abatement activities itself, without being forced to do so by the statute. The ability to coordinate with the City on such tasks would seem to be the appropriate goal rather than subjecting a lender to criminal liability for failure to do things which it has no legal right to do.

We would be happy to meet with members of the city government and other lenders to work out specific language changes. We request that the ordinance not be passed until such meeting can be convened.

Dated this 12th day of October, 2011.

Respectfully submitted,

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WELLS FARGO HOME MORTGAGE

Date: October 18, 2011

To: Chris Knight — Director of Building and Safety
Vicki Ozuna — Sr. Code Enforcement Officer
Orlando Sanchez — Deputy City Manager; City of Las Vegas

From: Joel Sarmiento — Sr. Vice President Regional Servicing Community & Preservation Director

CC: Cari Viado — Chris Knight's Administrative Secretary
Frank Howard Jr. — Client Service Consultant

Subject: City of Las Vegas Registration and Maintenance of Vacant Properties Ordinance Concerns REVISED

Registration of Abandoned Residential Property

I. **16.33.020** – "Default": removal of Default for ordinance; it would be hard to report all defaults and this is a privacy issue for the homeowner. Notices of Defaults are public records which have to be filed with the city.

Default needs to be defined, to vague – 60 days past due should be the definition.

II. **16.33.020** – "Specified property" (A) (B) & (C): only applies to properties in F/C or REO and not delinquent properties.

Foreclosure needs to be defined – What is the state of Nevada's definition of when F/C starts?

III. **16.33.020** – "Vacant": prior to F/C we can't determine who is a lawful occupant of the property.

Not occupied at all, lawfully or unlawfully and we (mortgage company) have tried to contact owner over a period of time with no luck. Not our position to police squatters.

IV. **16.33.030** – (A): should be revised with clear understanding, "actual or pending default" to vague.

In event the property is vacant, we should maintain in accordance to investor guidelines.

V. **16.33.030** – (B) (4): should not have to provide mortgager information on disposition.

VI. **16.33.030** – (C): local property manager prior to F/C sale may not always be in the local area. Would prefer to provide a direct Wells Fargo contact.

VII. **16.33.030** – (D) (1) (2): timeframes are too tight

Remove

VIII. **16.33.060** – (A): sounds as if we need to do repairs for damages the mortgager did

IX. **16.33.060** – (B) (2): We are not able to water due to water is shut off once a securing is completed

X. **16.33.060** - (D): Specified property shall be maintained in a secure manner so as not to be accessible to unauthorized persons.

Remove

I. **16.33.060** – (F): need clarification on who will be assessed penalties/fines, mortgagee/contractor or owner

II. **16.33.070** – (C) (1): criminal prosecution is unacceptable both pre and post sale.

Remove

*Lastly there should be a cure period for failure to register or failure to comply, with a wavier of penalty if cured.