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DISTRICT COURT

CLARK COUNTY, NEVADA

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| QUALITY LOAN SERVICE CORPORATION,<br><br>Petitioner,<br><br>v.<br><br>STATE OF NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY, FINANCIAL INSTITUTIONS DIVISION,<br><br>Respondent. | Case No.: A-12-657580-J<br><br>Dept. No.: XVI<br><br>**DECISION AND ORDER GRANTING PETITION FOR JUDICIAL REVIEW PER NRS 233B.130** |

Quality Loan Service Corporation's "Petition for Judicial Review per NRS 233B.130" (dated March 5, 2012) seeking review of the Decision of the Department of Business and Industry, Financial Institutions Division (dated February 12, 2012) came on for hearing on September 24, 2012, and the Court, having considered the Administrative Record, the briefs of the parties and Amicus Curae, and the arguments of counsel, does hereby issue its Decision and Order, and does hereby make the following Findings and Conclusions:

## FINDINGS OF FACT

1. In a typical real estate transaction involving a Deed of Trust, a lender loans money to a borrower to purchase real property, and the parties contractually agree that the real property shall be held in trust by a Trustee, pursuant to a Deed of Trust, as security for the loan.
2. The Deed of Trust typically contains a clause in which the borrower agrees that the Trustee may exercise the power of sale in the event of the borrower's default on the loan,

or other obligations, and typically also imposes other obligations upon the borrower such as maintaining liability and casualty insurance, keeping the property in good repair, and preventing waste of the property.

3. A Borrower's obligations under a Deed of Trust also typically include additional responsibilities, such as payment of taxes on the real property held in trust.
4. Petitioner Quality Loan Service Corporation ("Petitioner") is a Trustee (by original appointment or successive appointment) of Deeds of Trust, and has historically engaged in the exercise of the power of sale granted to Trustees by such Deeds of Trust and under NRS Chapter 107.
5. In the instance under review herein, Petitioners were Trustees on a Deed of Trust which held real property in trust to secure a loan for the purchase of such real property signed by Randolph Barton and Lori Ahmadi (collectively "Barton"); said Deed of Trust contained an explicit clause granting the Trustee the ability to exercise the power of sale in the event of the borrower's default.
6. Barton defaulted on the loan. After Barton defaulted on the loan, Petitioners noticed and conducted a sale of the real property held in trust for the Barton loan pursuant to procedures dictated by NRS chapter 107.
7. After Petitioner's sale of the real property held in trust as security for the defaulted Barton loan, the Respondent Department of Business of Business and Industry, Financial Institutions Division ("FID"), received a written complaint from Barton that Petitioner's actions constituted the "collection of a debt" requiring a license from the FID as a "collection agency." At that time, Petitioner had no such license. The FID issued a Cease and Desist Order, without further investigation, which ordered Petitioner to cease all activities as a trustee under NRS chapter 107, inter alia, until and unless Petitioner became licensed by the FID as a "collection agency".
8. The Cease and Desist Order was timely appealed by Petitioner, and an appeal hearing before the Commissioner of the FID was held on December 13, 2010.
9. After hearing evidence, arguments of counsel and briefs on the Issues, the FID

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Commissioner one year later (on February 14, 2012,) issued his decision concluding, inter alia, that a Trustee's exercise of the power of sale pursuant to the procedure set forth under NRS Chapter 107 constitutes the collection of, or solicitation of payment of, a claim and the Commissioner therefore ruled that the Petitioner was required to be licensed as a collection agency by the FID in order to exercise the power of sale under a Deed of Trust or NRS Chapter 107.

10. Petitioner has timely appealed the FID's decision, and the Court has received the record of the Administrative Proceedings, the briefs of the parties and Amicus Curae, and heard the arguments of counsel at hearing on September 24, 2012, and having considered the matter, now issues its decision on the Petitioner's Petition for Judicial Review.

## CONCLUSIONS OF LAW

1. Under NRS Chapter 107, a Trustee has the ability to exercise the power of sale for real property held as security for a note upon the default of the borrower for that note.
2. Pursuant to state policy articulated in NRS 80.015, 86.5483(1)(6) and 87A.615, until the passage and implementation of AB 284 in 2011, Trustees exercising the power of sale under a Deed of Trust did not be licensed to do business in the state of Nevada.
3. Pursuant to applicable precedent, the exercise of the power of sale by a Trustee under NRS Chapter 107 is not "doing business" in Nevada. See e.g. Bonicamp v. Vasquez, 107 Nev. 377 (2004); McMillan v. United Mtg. Co. 82 Nev. 117 (1966); Bruce v. Homefield Financial Inc., 2011 WL 4479736 (U.S. District Court, D. Nev. 2011)
4. Pursuant to applicable precedent, the exercise of the power of sale under a Deed of Trust is not the collection or solicitation of payment of a claim See e.g. Bruce v. Homefield, supra.
5. As a matter of applicable law, the exercise of the power of sale by a Trustee under NRS Chapter 107, including giving the required notices and conducting sale of the real property held as security, is not the collection of debt or claim or the solicitation of payment of a debt or claim under NRS Chapter 649.
6. Based upon the foregoing, a Trustee exercising the power of sale pursuant to the

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procedures set forth in NRS chapter 107 is not required to obtain a license as a "collection agency" from the FID prior to exercising the power of sale under a Deed of Trust.

7. Because Petitioner, as a Trustee, was merely exercising the power of sale specifically granted under the Barton's Deed of Trust, as well as NRS Chapter 107, Petitioner was not collecting a debt or claim or soliciting the payment of a debt as defined in NRS Chapter 649, and therefore was not required to be licensed by the FID as a collection agency.

8. Based upon the foregoing, the Cease and Desist Order issued by the FID against the Petitioner in 2010 was legally flawed, in that it required Petitioner to cease and desist exercising the Power of Sale under NRS Chapter 107 unless it were licensed as a collection agency under NRS Chapter 649.

9. Based upon the foregoing, the Decision of the FID was also legally flawed, in that:

(A) The notices required by NRS Chapter 107 in the event of default by the borrower are <u>not</u> the solicitation of payment of a debt or claim;

(B) The exercise of the power of sale by a Trustee pursuant to the procedures set forth in NRS Chapter 107 is <u>not</u> the collection of a debt or claim;

(C) The FID has <u>no</u> authority to regulate or oversee a Trustees exercise of the power of sale under, or issuance of the notices required by, NRS Chapter 107;

(D) Only the Judiciary, pursuant to a duly filed claim in District Court, has authority to review or oversee a Trustee's exercise of the power of sale, and its requisite notices, under NRS Chapter 107; and

(E) NRS chapter 649 gives the FID authority to regulate debt collection and collection agencies, but gives the FID <u>no</u> authority to regulate, license or oversee a Trustee's exercise of the power of sale under NRS Chapter 107.

10. Pursuant to NRS 233B.135, this Court has authority to reverse or affirm the Decision of the FID upon judicial review.

11. Because of the unique nature of real property, the use of a Deed of Trust to hold such real property as security for a real estate loan (which includes the Trustee's power of sale

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by the contractual consent of the borrower), a Deed of Trust is not a "claim" or "debt" as defined by NRS Chapter 649.

12. NRS chapter 649 does not apply to the exercise of the power of sale under a Deed of Trust. Rather, only NRS Chapter 107 regulates the exercise of the power of sale pursuant to a Deed of Trust.

13. NRS Chapter 107 grants no regulatory authority or oversight of the power of sale by Trustees to any state executive agency. Rather, all regulatory authority for the exercise of the power of sale under NRS Chapter 107 is exclusively granted to the Judiciary, by actions filed in District Court (pursuant to NRS Chapter 107) challenging validity of the Trustee's exercise of the power of sale.

14. The FID has no regulatory, licensing or enforcement authority over a Trustee's exercise of the power of sale pursuant to NRS chapter 107.

15. If any Finding or Conclusion herein shall be more appropriately designated the other, they are hereby so designated.

NOW, THEREFORE based upon the foregoing Findings and Conclusions, the Court hereby ORDERS that the Petitioner's Petition for Judicial Review per NRS 233B.130 is granted, and pursuant to the Court's authority under NRS 233B.135, the Court hereby:

1. Reverses the Decision of the FID on the grounds that a Trustee's exercise of the power of sale under NRS Chapter 107 is not the collection of a debt or claim under NRS Chapter 649, and therefore a Trustee who is only exercising the power of sale under NRS chapter 107 is not required to obtain a license from the FID as a collection agency; and

2. Orders that the Cease and Desist Order issued herein by the FID in 2010 and the Decision

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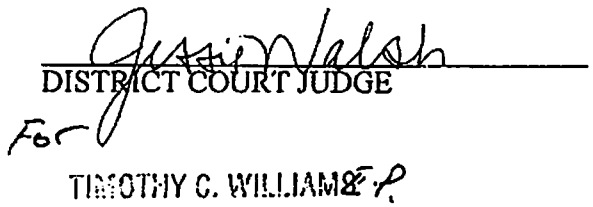
of the FID issued herein in 2012 are void ab initio due to legal error by the FID.

IT IS SO ORDERED this 2nd day of January, 2012.



DISTRICT COURT JUDGE

For

TIMOTHY C. WILLIAMS

PREPARED AND SUBMITTED:

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 3rd day of January 2013, I sent by Email and U.S. Postal Service, first class mail, postage prepaid, a true and correct copy of the foregoing documents described as **DECISION AND ORDER GRANTING PETITION FOR JUDICIAL REVIEW PER NRS 233B.130** to the following:

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