

Insights

NEVADA SUPREME COURT AFFIRMS THAT RESCISSION OF DEFAULT IS EFFECTIVE TO DEACCELERATE MORTGAGE LOAN

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In November 2020, the Nevada Supreme Court denied *en banc* reconsideration of its unpublished decision in *Glass v. Select Portfolio Servicing*. The *Glass* decision confirmed that a rescission of a recorded notice of default deaccelerates a mortgage loan. This is critical because many Nevada borrowers, like plaintiff in *Glass*, recently have initiated litigation asserting that, pursuant to the ten-year limitations period of NRS 106.240, their loans are presumed satisfied because a notice of default was recorded more than ten years ago. NRS 106.240 provides that a lien “shall at the expiration of 10 years after the debt secured by the mortgage or deed of trust ... become wholly due, terminate, and it shall be conclusively presumed that the debt has been regularly satisfied and the lien discharged.” In *Glass*, the parties did not dispute that the Notice of Default accelerated the loan and made the balance immediately due. Thus, this started the ten-year period present in NRS 106.240. Importantly, a rescission of the Notice of Default later was recorded. Using NRS 106.240, Nevada borrowers (like plaintiff in *Glass*) assert that their loan debt is extinguished even when the notices of default were subsequently rescinded. The Nevada Supreme Court rejected this argument by concluding that “NRS 106.240 was inapplicable ... because [defendant] rescinded the Notice of Default.” Although it is unpublished, the Nevada Supreme Court’s *Glass* decision likely will lead to fewer claims regarding rescinded notices of default under NRS 106.240. As an example of this, BCLP recently defended a mortgage servicer in litigation in which the borrower made the exact claim as the plaintiff did in *Glass*. In the BCLP-defended litigation, the Court granted BCLP’s motion to dismiss. Plaintiff appealed this past summer, but last month dropped the appeal following the Nevada Supreme Court’s denial of *en banc* reconsideration in *Glass*. Other borrowers likely will follow suit and abandon their claims under NRS 106.240. This said, mortgage servicers should continue to expect litigation in Nevada regarding notices of default that are over ten years old and have *not* been rescinded.

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