

App. No. \_\_\_\_

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In The

Supreme Court of the United States

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SFR Investments Pool 1, LLC,

*Petitioner,*

v.

Federal Home Loan Mortgage Corporation, Federal Housing Finance Agency, Federal  
National Mortgage Association

*Respondents.*

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PETITIONER'S APPLICATION TO EXTEND TIME TO  
FILE PETITION FOR A WRIT OF CERTIORARI

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To the Honorable John G. Roberts, as Circuit Justice for the United States Court of Appeals  
for the Ninth Circuit:

Petitioner SFR Investments Pool 1, LLC respectfully requests that the time to file a  
Petition for a Writ of Certiorari be extended sixty days from September 24, 2018, to and  
including November 23, 2018. The U.S. Court of Appeals for the Ninth Circuit issued its  
judgment affirming the district court's grant of summary judgment for respondents on June  
25, 2018. App. A, *infra*. Absent an extension, the Petition therefore would be due on  
September 24, 2018. This Application is being filed at least 10 days before that date. *See* S.  
Ct. R. 13.5.

## Background

1. The Federal National Mortgage Association (“Fannie Mae”) and Federal Home Loan Mortgage Corporation (“Freddie Mac”, collectively the “entities”) are government-sponsored enterprises participating in the secondary market for residential mortgages. Both acquire existing mortgages, securitize them, and then issue certificates that grant holders a share of the payments made by the underlying borrowers. In order to securitize the mortgages, Fannie Mae and Freddie Mac frequently place the loans into common-law trusts, with the entities acting as the trustee.

During the last housing crisis, both entities suffered a precipitous drop in the value of their mortgage holdings due to the large number of subprime mortgages in their respective portfolios. In response, Congress enacted the Housing and Economic Recovery Act of 2008 (“HERA”), Pub. L. No. 110-289, 122 Stat. 2654 (codified as amended at 12 U.S.C. § 4511 et seq.), which, in part, established the independent Federal Housing Finance Agency (“FHFA”). HERA designated FHFA as the regulator of Fannie Mae and Freddie Mac and gave FHFA the power to place the entities under a conservatorship to assist in the selling off of their mortgage holdings. 12 U.S.C. § 4617(a). Shortly thereafter, FHFA placed Fannie Mae and Freddie Mac under its conservatorship.

Among other things, HERA enacted the so-called “Federal Foreclosure Bar,” under which “[n]o property of the Agency [*i.e.*, the FHFA, *see id.* § 4502(2)] shall be subject to . . . foreclosure or sale without the consent of the Agency.” *Id.* § 4617(j)(3). The question in this case is whether that provision applies to securitized mortgages held in trust by Fannie Mae or Freddie Mac. Another provision declares that FHFA shall “by operation of law,

immediately *succeed to* . . . all rights, titles, powers, and privileges of the regulated entity . . . with respect to [its] assets.” *Id.* § 4617(b)(2)(A) (emphasis added). However, a “General Exception” to FHFA’s power as conservator provides that “[a]ny mortgage . . . *held in trust* . . . *by a regulated entity* for the benefit of any person other than the regulated entity shall not be available to satisfy the claims of creditors generally,” *id.* § 4617(b)(19)(B)(i) (emphasis added), but instead “shall be held by the conservator . . . for the beneficial owners of such mortgage . . . in accordance with the terms of the agreement creating such trust.” *Id.* § 4617(b)(19)(B)(ii)-(iii). Accordingly, the statute directs that the FHFA shall succeed to the property of the entities *generally*, but with respect to securitized mortgages held in trusts, that property shall be held in trust by the FHFA, rather than becoming “property of the Agency,” *id.* § 4617(j)(3), as required to trigger the Federal Foreclosure Ban.

2. This case concerns four properties located in Las Vegas, Nevada and a fifth located in Henderson, Nevada. Each of the original property owners obtained mortgages that were later acquired by either Fannie Mae or Freddie Mac, securitized, and placed in trusts for which Fannie or Freddie is the trustee.

Petitioner purchased the properties from Nevada homeowners’ association (“HOA”) auctions after the HOAs foreclosed on liens assessed against the properties for unpaid HOA dues. Under Nevada Revised Statute § 116.3116, an HOA acquires a superpriority lien on a homeowner’s property for up to nine months of unpaid HOA dues. That lien is “prior to all other liens and encumbrances,” and “all security interests.” *Id.*; *see also SFR Inv. Pool 1 v. U.S. Bank*, 334 P.3d 408, 410 (Nev. 2014). Under settled law, the foreclosure of a senior lien extinguishes all subordinate liens, allowing the purchaser to take title of the property free

and clear. *SFR Inv.*, 334 P.3d at 412. The junior lienholders are then entitled to any proceeds of the sale in excess of those necessary to satisfy the senior lienholder. *Id.* If the proceeds are insufficient, the junior lienholder retains an *in personam* claim against the prior property owner. *Id.* at 422 (Gibbons, C.J., concurring-in-part and dissenting-in-part). It may also elect to purchase the property at the foreclosure sale, or otherwise pay off the superpriority lien, and thereby retain its interest in the property. *Id.* at 413-14 (maj. op.).

The Entities failed to record their interests in four of properties in the local land record prior to the HOA foreclosures sales. *Federal Home Loan Mortgage Corp. v. SFR Investments Pool 1, LLC*, 893 F.3d 1136, 1149 (9th Cir. 2018) (FHLMC). The HOAs did not seek FHFA's consent before foreclosing on the lien. Neither FHFA nor the Entities participated in the foreclosure sale.

After waiting between one and three years after the sales closed, FHFA, Freddie Mac, and Fannie Mae filed suit against petitioner, seeking declaratory relief, quiet title, and a permanent injunction regarding the properties. They claimed that because FHFA had not consented to the foreclosure, the sale did not validly extinguish Freddie and Fannie's security interests. The district court granted summary judgment for the government entities. *Federal Housing Finance Agency v. SFR Investments Pool 1, LLC*, No. 2:15-cv-01338, 2016 WL 2350121 (D. Nev. May 2, 2016).

3. On appeal, the Ninth Circuit affirmed, concluding that the foreclosure did not extinguish the Entities' security interests because the Federal Foreclosure Bar applied and FHFA had not consented to the sale. The court first held that the FHFA could "succeed to," 12 U.S.C. § 4617(b)(2)(A)(i), the mortgages obtained by the entities even if those mortgages

were “held in trust” pursuant to § 4617(b)(19)(B). *FHLMC*, 893 F.3d 1144-46. The court acknowledged that the provision declaring that the FHFA should “succeed to” to the property rights of Fannie Mae and Freddie Mac was in a section of the statute labeled “General Powers.” And it acknowledged that a different provision, in a section denominates as “General Exceptions” to those general powers, provided that securitized mortgages held in trust by the entities shall “be held in trust” by the FHFA. But it nonetheless concluded that “General Exception” provision did not, in fact, create any exception to the “General Rule” of succession. *Id.* Instead, the court believed, the “Exception” “confer[red] *additional* protections upon the Enterprises’ securitized mortgage loans.” *Id.* Thus, the court concluded that FHFA had succeeded to the mortgages at issue and that the Federal Foreclosure Bar therefore required the HOAs to have sought FHFA’s consent before foreclosing on their liens. *Id.*

The court also affirmed its previous conclusion in *Berezovsky v. Moniz*, 869 F.3d 932 (9th Cir. 2017), that the Federal Foreclosure Bar preempts the Nevada law affording HOA liens a limited super-priority. *FHLMC*, 893 F.3d at 1146-47. It further held that the FHFA did not deprive petitioner of due process. *Id.* at 1147-52.

### **Reasons For Granting An Extension Of Time**

The time to file a Petition for a Writ of Certiorari should be extended for sixty days for three reasons:

1. Petitioner only recently retained Supreme Court counsel to file a petition on its behalf. Additional time is necessary for counsel to study the facts and the law and prepare a thorough petition for this Court’s review. The press of other matters before this and other

courts, including an opening brief before the U.S. Court of Appeals for the D.C. Circuit, and a petition for writ of certiorari, a reply to a brief in opposition, and an amicus brief in support of a petition for a writ of certiorari before this Court, will make preparation of the Petition difficult absent an extension of time;

2. No prejudice will result from granting this request for an extension. Whether the extension is granted or not, the case would still be considered on its merits this Term if the Court grants the petition;

3. The Court is likely to grant the petition. While further research is required to fully elucidate the basis for that review, this case raises significant issues about the scope of FHFA's powers under HERA. In particular, the case raises the critically important question whether the FHFA is entitled to prevent enforcement of the security interests held by thousands of creditors with senior liens on properties with mortgages securitized by Fannie Mae or Freddie Mac. Respondents have already acknowledged in the Ninth Circuit that in one state alone, the Ninth Circuit's ruling "will affect hundreds, if not thousands of similar cases pending in Nevada state and federal courts." Appellees' Motion to Lift the Stay and Issue the Mandate 9 (citation and internal quotation marks omitted).

## Conclusion

For the foregoing reasons, the time to file a Petition for a Writ of Certiorari in this matter should be extended for sixty days to and including November 23, 2018.

Respectfully submitted,



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