

Domestic Partnerships in Nevada

By Michele Touby LoBello, Esq. and John D. Jones, Esq.

The Nevada legislature has finally enacted a law which acknowledges the rights of same-sex or otherwise unmarried partners in this State. Commencing on October, 1, 2009, individuals may legally register as domestic partners in the State of Nevada. A "domestic partnership" is a statutorily created civil contract which will allow domestic partners to have the same rights, protections, benefits, responsibilities, obligations and duties as do parties to any other civil contract created pursuant to Title XI of Nevada Revised Statutes. In other words, same-sex partners will be legally entitled to enter a contract establishing a legal relationship which will require each party to recognize the other in the same manner as do individuals who are married. Although a domestic partnership is not considered to be a "marriage" for purposes of the Nevada Constitution, under the new law, domestic partners will be able to enjoy all of the rights and responsibilities of married spouses in this State.

According to the new law, to qualify to register as domestic partners in Nevada, individuals will be required to submit a registration form to the Nevada Secretary of State certifying that they have a common residence, that neither party is married nor is a member of another domestic partnership, and that the two individuals are not related by blood in a way that would prevent them from being legally married to each other in Nevada. Both individuals must be at least 18 years old and competent to consent to the domestic partnership. The applicants must also pay a filing fee. Once the application is processed by the Secretary of State, a certificate is issued recognizing the partnership.

Individuals seeking to formalize their domestic partnership must address many family law issues and will benefit from the expertise of counsel in drafting the appropriate domestic partnership agreement which protects the rights of both parties and preserves the goal of family. As such, prior to registering as domestic partners, individuals will want to consult an attorney to evaluate their legal rights and obligations and their eligibility to register, as well as to fully investigate the impact on the relationship as to the parties' children and property rights. Because of the legal uncertainty associated with resolving disputes of any nature in family court, a well drafted domestic partnership agreement can ensure that the intentions of the domestic partners in formally establishing the partnership are honored. Black & LoBello can assist with this consultation, counseling parties as to the advisability of registration, as well as with the registration process itself.

Black & LoBello Welcomes Robert B. Noggle and Kari T. Molnar



Robert B. Noggle joins us after working in private practice in Portland, Oregon. Subsequently, he transitioned to corporate practice serving as general counsel for two different commercial asset based lenders. Mr. Noggle also worked to increase profitability for a privately held company that was first acquired by a subsidiary of Washington Water Power and then by Textron Financial, a Fortune 500 company, and served as the company's Chief Operating Officer. Since moving to Las Vegas, Mr. Noggle has worked with several title companies and businesses involved with the real estate industry.

Kari T. Molnar joins the Black & LoBello family law department. In 2008, Ms. Molnar was awarded with Certificate of Commendations from Nevada Senators Harry Reid and John Ensign for her volunteer work with the Clark County Pro Bono Project. Ms. Molnar worked assisting low-income clients with pro bono legal services in the area of family law. Ms. Molnar has significant experience in contested divorce, custody, support, pre and post nuptial agreements, protective custody orders, adoption and guardianships.



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Mandatory Foreclosure Mediation

By Robert B. Noggle

Check Out Our BL(og)!

We have created a blog as a reference and interactive site for our clients and other interested guests.

If you have any questions or commentary, we invite you to post them and we will do our best to respond in a timely manner.

You can view our Blog by selecting the hot button on the main page of our website.

www.blacklobellolaw.com

A new Nevada law became effective July 1, 2009, that allows any homeowner receiving a Notice of Default to request a mandatory mediation with their lender. The purpose of the program is to avoid a foreclosure by providing a forum for the parties to negotiate a loan modification or a short sale.

The most important development is that the lender must be represented at the mediation by a representative who has authority to modify the loan or who has telephone access to someone with such authority. Failure to do so may result in the mediator modifying the loan. Proposed court rules for the program allow a lender to participate by telephone if approved by the mediator.

The mediation is nonbinding; the lender retains complete discretion as to whether to modify the loan and, on what terms. However, a trustee's sale of the home may not occur until the mediation is completed. The trustee's sale is the final step in the foreclosure process.

The cost of the mediation which is \$400.00 is divided equally between

the homeowner and the lender. The maximum time allotted to a mediation session under the proposed rules is 4 hours. The homeowner must provide a financial statement, together with a Housing Affordability Worksheet. The lender must provide a certified copy or original of the deed of trust and promissory note, together with a copy of each assignment of the note and trust deed. The lender's failure to provide the required documents may result in sanctions. The lender may also provide an estimate of the short sale value of the property if the loan cannot be modified.

Under the proposed rules the mediation must take place within 90 days of the filing of the Notice of Default. By law, the foreclosure process can take no less than 111 days from the filing of the Notice of Default to the sale. The mediation program is mandatory if the Notice of Default was recorded July 1, 2009, or thereafter. The parties may stipulate to mediation if the Notice of Default was recorded prior to

July 1, 2009. Mediators will be Nevada judges and attorneys.

Final mediation rules will be issued in the near future. However, there are many unanswered questions as to how effective the program will be. Whether lenders will participate in a true good faith effort to avoid foreclosure is unknown. Based on cases from around the country, a lender's ability to provide the necessary documentation including copies of all assignments could be a serious substantive issue. For the homeowner, the ability to present a case for a loan modification will depend upon an ability to make their numbers work so as to persuade the lender of their ability to make future modified payments.

Black & LoBello can assist you with foreclosure matters and mediation.



Do you have a question to ask the attorney? Submit your question to the editor at editor@blacklobellolaw.com and your question may be featured in our next issue!

Ask the Attorney!

Q. What is the foreclosure process in Nevada?

A. A foreclosing lender in Nevada is entitled to a nonjudicial foreclosure of its Deed of Trust. The Deed of Trust secures the payment of the promissory note given by the homeowner to the lender at the time the loan is made.

A nonjudicial foreclosure means that the lender need not file a court case to pursue the foreclosure. Nevada lenders are entitled to a trustee's sale of the property once the mandatory foreclosure time period has passed.

The foreclosure process takes a minimum of 111 days. The process begins with the filing and service of the Notice of Default (NOD). The NOD is filed with the county real property records. The NOD starts the 35-day reinstatement period. During this period, the homeowner may reinstate the loan by paying all delinquent payments, trustee fees, and other expenses.

Starting on the 36th day after filing of the NOD, the homeowner can avoid the trustee's sale only by paying the entire loan amount, together

with the associated fees and expenses.

During the final 21 days of the 111-day foreclosure period, the trustee must publish a notice of sale once per week for three successive weeks. The lender will bid in the amount of its debt. This is generally the winning bid. The lender takes title to the property after the sale.

It is important to note that after the sale, the homeowner has no right of redemption for the property.

Attorney Spotlight with Michele T. LoBello

Merina Berkey, Junior Editor for *You Have Been Served!*, sits with Michele Touby LoBello, Partner of Black & LoBello for an exclusive interview.

MB: *Michele, when did you start Black & LoBello, and what was your inspiration to have your own firm?*

MTL: I was ready to start a family, and I thought if I had my own firm, I could work as an attorney part-time and be able to spend half of the working day at home with my kids. As it turns out, Tisha and I both learned quickly that we would have to work long hours to establish the firm we wanted. But we love practicing law and have built a solid practice which provides us a place we love going to everyday. So while I will never be able to work part-time, I certainly don't mind.

MB: *What are your primary practice areas?*

MTL: I practice exclusively in the area of family law.

MB: *How many years have you been practicing law?*

MTL: I have been practicing for 15 years.

MB: *How do you describe your leadership style?*

MTL: I try to include my co-workers in all aspects of decision-making, and we work together to develop the best strategies for managing the cases. However, I know my clients are relying on my experience in representing them, so I ensure each member of my team is receiving proper direction and following through with the game plan on each case. To keep employees on track, I have learned to be patient but firm. The services we provide for our clients involve protecting the thing most sacred to them -- their children and their financial security. I try to ensure that in leading my team, everyone remains aware of the urgency involved in each of our cases. Everyone I work with here is professional and knowledgeable, and it is easy to be an effective leader if you are surrounded by competent employees.

MB: *During the course of running your own firm, what has been the biggest business challenge you have faced?*

MTL: The biggest challenge for me has always been running the business versus practicing law. I do not want the headaches of running a business...I just want to be an attorney. Fortunately, my partner loves managing the business and she does a really good job handling the "administration".

MB: *What is your best business advice to all of our readers?*

MTL: Treat your clients and your co-workers the way you want to be treated.

MB: *Who inspired you to get into the business?*

MTL: My Mother.

MB: *What is the most important thing you have learned from your mentors?*

MTL: Don't bother working hard unless you are working smart.

MB: *What are your top five favorite movies?*

MTL: An Affair to Remember, Star Wars, My Cousin Vinnie, Dangerous Liaisons, and Beaches.

MB: *What is your favorite kind of sandwich?*

MTL: Alfalfa on wheat, no cheese, from Dagwood's.

MB: *Do you have kids, how many, how old?*

MTL: I have two boys -- Nicholas is 8 and Joseph is 6. They are both brilliant and very handsome!

Nevada Supreme Court Reviews NRS 38.247

By Adrienne C. Duncan, Esq.

On April 16, 2009, the Nevada Supreme Court held that it lacked jurisdiction to review a district court order that vacates an arbitration award, directs a rehearing, and denies a motion to confirm the award. The holding applies to private arbitrations that are held pursuant to contractual provisions in accordance with NRS 38. In doing so, the Court followed prior

holdings from the District of Columbia, Minnesota, Nebraska, and Maine. Basically, the Nevada Supreme Court strictly interpreted NRS 38.247, which does not provide for an appeal from a district court order vacating an arbitration award and directing a rehearing. Rather, it permits an appeal from an order vacating an arbitration

award without directing a rehearing.

See Karcher Firestopping v. Meadow Valley Contractors, 125 Nev., Advance Opinion 11.

New Consumer Protections By Tisha Black-Chernine, Esq.

The President has proposed a new regulatory agency that would oversee a wide range of consumer financial products including credit cards and mortgages which have become too complex and have played a significant role in the present economic crisis.

The Consumer Financial Protection Agency, is purposed to police lenders and protect consumers in credit, savings and other transactions. The Consumer Financial Protection Agency, and the Federal Reserve are to be two of the central components in a broad overhaul of the financial regulatory system.

The decision to create the new agency comes amid complaints that mortgage lenders and credit card companies have taken advantage of customers and saddled them with debt. Predatory practices and lax protections contributed to the financial crisis. It is hoped that the new agency will assist in providing consumers with protection and representation.

The new agency could write rules, reform mortgage laws, examine financial institutions' practices, enforce compliance through penalties, ban unfair practices and require that companies clearly inform consumers of costs, penalties and risks associated with their credit products. It also would allow states to pass laws that are stricter than federal standards.

In addition, the newly proposed regulations require banks and financial institutions to offer a basic mortgage product with straightforward terms, such as a 30-year, fixed-rate mortgage loan. Although, consumers could opt for more complicated products, those would be subject to more stringent rules and disclosures than they are now.



We're interested in your opinion. If you have any suggestions about how we can improve ***You Have Been Served!***, please let us know by contacting your Black & LoBello attorney or e-mail us at editor@blacklobellolaw.com.

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Tenant Protection

By Carlos L. McDade, Esq.

A federal law to protect renters was recently passed by Congress and signed into law by President Obama. The **Protecting Tenants at Foreclosure Act of 2009** became law on May 20, 2009. The new tenants' protection law creates unprecedented federal protections for tenants.

The Act protects tenants under any lease of a residence in existence at the time of the law's enactment, whether or not there was a previous federal connection to or regulation of the property. The law was passed as a response to the plight of tens of thousands of tenants who continued to pay their rent to a landlord who was not making mortgage payments. Often, most tenants are unaware of a possibility of foreclosure until receiving a Notice of Eviction. In Nevada, tenants were only provided with three days to vacate the property. The Act provides limited protections to tenants in the face of foreclosure.

Under the Act, a successor-in-interest to the mortgagor may not consider the lease to be a non-binding obligation between third parties. The successor-in-interest assumes its interest in the former-landlord's property subject to the obligation to comply with the new procedures created under the law, which recognizes continuing obligations springing from the lease. New procedures are designed to stop the successor-in-interest from employing summary eviction to force a renter to move out. The Act was part of the larger Helping Families Save Their Home Act, and can be found in Title VII of Public Law 111-22.

There are several protections in the law for tenants, but not all protections will apply equally to everyone.

1. If a bona fide tenant has a lease or rental agreement, the renter has the right to remain in the property until the lease agreement expires. The new Landlord is not allowed to ignore the existing Lease Agreement of the renter. So a bona fide tenant may remain in the property until the lease expires. However, there are some exceptions to this right:

(a) if the owner sells the house to a buyer who is going to move into the house to live there as the primary residence, then the tenant must move out within ninety (90) days after the Notice to Vacate is received; and

(b) if a tenant does not have a lease, or if State law allows a lease to be terminated "at will," then the tenant is protected for ninety (90) days. The Landlord must first provide written Notice to Vacate in compliance with this law and the tenant must then move out within ninety days after the Notice is received.

2. If a tenant is renting federal property and the rules provide more protection than the Act, or if a tenant's State Law provide more protections, then the more protective rules apply.

A full-service law firm, Black & LoBello was founded in 2000 with a philosophy of providing exceptional legal services to individuals and businesses in Nevada and throughout the Western United States.

Comprised of long-time Nevada residents, Black & LoBello is committed to achieving the goals of its clients by providing cost-efficient and comprehensive legal services through customized and practical legal strategies. The firm's attorneys and staff possess diverse backgrounds with extensive experience in

addressing matters of complex and commercial litigation, premises and automobile liability, employment law, general liability and insurance defense, products liability, business and real estate transactions, general civil litigation, landlord/tenant disputes, estate planning and domestic relations. In addition, the firm provides representation in appellate matters before both the State and Federal Courts.

Practice Areas:

- Administrative Law
- Bankruptcy
- Civil Litigation
- Commercial Law
- Construction Law
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- Domestic Relations Law
- Employment Law
- Environmental Law
- Estate Planning
- Real Property Law
- Worker's Compensation

Whether your legal needs are large or small, Black & LoBello has a full staff of experienced attorneys to assist you.