

## \$108 Million Awarded Against Bank of America

Tisha Black Chernine, Esq.

The Federal Trade Commission (FTC) ordered two Countrywide mortgage servicing companies, now a part of Bank of America, to pay \$108 million to settle charges that they collected excessive fees from cash-strapped borrowers struggling to keep their homes. The FTC stated in its complaint that Countrywide's loan-servicing operation deceived homeowners behind on mortgage payments into paying inflated fees for a variety of default-related services. In addition, Countrywide made false or substantiated claims about amounts owed by homeowners in Chapter 13 bankruptcy and also failed to disclose when new fees or charges were being added. Specifically, the FTC's complaint states that Countrywide ordered property inspections, lawn



mowing, and other services meant to protect the lender's interest in the property. Instead of hiring third-party vendors to perform the services, Countrywide created subsidiaries to hire the vendors. Allegedly, these subsidiaries marked up prices of the services charged by the vendors by as much as 100 percent or more. Then, Countrywide charged the homeowners these marked-up fees, earning a substantial profit. The FTC stated that the \$108 million settlement will be used to reimburse overcharged homeowners whose loans were serviced by Countrywide before being acquired by Bank of America

in July 2008. The settlement also requires the defendants to make significant changes to their bankruptcy servicing practices. They must send borrowers in Chapter 13 bankruptcy monthly notices regarding amounts and fees owed. Additionally, defendants must implement a data integrity program ensuring the accuracy and completeness of the data used to service loans in Chapter 13 bankruptcy. &



## Fannie and Freddie Announce HAFA Guidelines

Joshua D. Carlson, Esq.

Government-sponsored entities (GSE), Fannie Mae and Freddie Mac, both issued new guidelines to servicers on June 1, 2010. The guidelines allow homeowners with GSE-owned or guaranteed loans to pursue a short sale or deed-in-lieu (DIL) of foreclosure if they are unable to secure a modification under the Home Affordable Modification Program (HAMP). The effective implementation date is August 1, 2010. However, servicers are encouraged to implement the Fannie Mae and Freddie Mac HAFA program as early as possible.

Like the Treasury Department's original HAFA guidelines, Fannie and Freddie loans must first be found eligible for HAMP. If borrowers fail to fulfill HAMP obligations, a HAFA short sale or DIL will be offered. Unlike the Treasury HAFA program, Fannie Mae and Freddie Mac stipulate that HAFA can be applied only after "all other home retention

*Continued on Page 2*

## In This Issue

BoA Pays \$108 Million	1
Tenant Rights	1
HAFA Guidelines	1,2
SCRA Benefits	2
Restrictive Covenants	2
Domestic Partnerships	3
Health Care Reform	3,4
Attorney Spotlight	3,4
New Addition	4
About Us	4

## Join Our (BL)og

Our web address is [www.blacklobellolaw.com](http://www.blacklobellolaw.com). Click the Blog link to read more informative legal commentary. Also, please visit our bankruptcy blog: [blacklobellobankruptcy.com](http://blacklobellobankruptcy.com).  
Subscribing is easy!



Become a fan of Black & LoBello's Facebook Page: [facebook.com/BlackLoBello](http://facebook.com/BlackLoBello).



For instant updates on all posts, social events, and seminars, follow us on Twitter: [twitter.com/blacklobellolaw](http://twitter.com/blacklobellolaw).

## Knowing Tenant Rights Eases Foreclosure Problems

Carlos L. McDade, Esq.

Tenants, ignorant of their rights, may experience added difficulties if the property they rent goes into foreclosure. When a property forecloses, the owner receives constant updates from the bank. However, with a rental property, the foreclosure can remain hidden from the tenant depending on whether the property owner chooses to disclose that information. In some cases, tenants are kept in the dark until the day they get "surprised" by an eviction notice. That day comes when a person shows up at the home, giving the renter five days, then another three days, to vacate. After those last three days, that same person will come to the home and insist that the renter sign a

Relocation Assistance/Cash for Keys agreement. Typically, this agreement allows the renter 14 days to vacate from a particular date as well as \$2,000 to cover moving expenses. Those extra 14 days may seem like a nice gesture and

\$2,000 can be tempting especially if the renter is financially strapped. However, the renter is not required to accept this "offer." The real issue is that most renters, landlords, lenders, realtors, and other agents that work in the current real estate market are not aware of a renter's rights.

Under Nevada State Law (NRS 40.255), the owner of a dwelling must provide the occupant with a Three Day Notice to Vacate before filing a Complaint for Eviction. If the owner of the property does so, the occupant has 20 days to file a response to oppose the eviction.

To view the full article please visit: [www.blacklobellolaw.com](http://www.blacklobellolaw.com).

## Fannie and Freddie

Continued from Page 1

workout options have been exhausted." Servicers must start using Fannie Mae's HAFA guidelines for all conventional mortgage loans held in Fannie Mae's portfolio that are part of a mortgage-backed securities (MBS) pool with the special servicing option or that are part of a shared-risk MBS pool for which Fannie Mae markets the acquired property. Freddie Mac's HAFA guidelines apply to all "first-lien mortgages owned, guaranteed, or secured by Freddie Mac that were originated on or before January 1, 2009."

Like the Treasury department's HAFA payout, borrowers who successfully complete a Fannie Mae or Freddie Mac HAFA short sale or DIL will receive a \$3,000 relocation assistance payout. In most circumstances, the borrower will receive funds at closing of a short sale or within five (5) days after the servicer's acceptance of a DIL, provided the borrower has vacated the property and left it in acceptable condition. &

## SCRA Benefits Active Duty Soldiers

Stephanie B. MacKeen, Esq.

The United States Government signed the Servicemembers' Civil Relief Act (SCRA) into law on December 19, 2003. SCRA is intended to protect service members who are named in civil lawsuits or are serving overseas. The Act also protects service members from civil judgments being entered against them while they are on active duty.

Under Section 201 of SCRA, when a defendant is served with a process in any civil proceeding but does not make an official appearance, the plaintiff must file an affidavit attesting to whether the defendant is an active duty member of the military. If the defendant is a service member, the court must appoint an attorney to represent him or her. If the attorney cannot locate the service member, the attorney has the ability to act on the defendant's behalf with the caveat that the attorney's actions neither bind the service member nor waive any defenses that the service member would be entitled to assert.

Most importantly, if the court determines that a civil action cannot proceed without evidence from the service member, the court must stay all proceedings for a minimum of 90 days. This becomes especially useful in divorce proceedings. Usually, issues regarding child custody and the division of assets and debts require the testimony of, and evidence from, both parties. &

## Assignability of Employment Restrictive Covenants

Thomas G. Grace, Esq.

Noncompetition agreements have become more common due to the tightening economy. Companies do whatever they can to secure their market share and compete in the marketplace. But business owners, with the hope of one day selling their company, and those pursuing the purchase of competitors to increase market share, should be aware of an important twist in Nevada law.

The decision of the Nevada Supreme Court in Traffic Controls Servs., Inc. v. United Rentals Northwest, Inc., 120 Nev. 168, 87 P.3d 1054 (2004) was an uncharacteristically pro-employee decision that significantly changed the law regarding the succession of companies in Nevada.

Traffic Controls involved (1) an asset sale and (2) the assignment of a non-compete contract without language in the contract permitting assignment to (3) a new employer. Each fact was important to the analysis of the Nevada Supreme Court. In Traffic Controls, the employee resigned his employment with United Rentals and went to work for NES Trench. The employee made the decision that he did not want to work for United Rentals. During negotiations with NES Trench, the employee sought and received assurances that NES Trench had no plans to sell its business and in particular, not to sell to United Rentals. When he joined NES Trench, the employee signed an agreement including a noncompete covenant in favor of NES Trench.

Unfortunately for the employee, United Rentals purchased the assets of NES Trench and the employee found himself once again working for United Rentals – a situation that he had wanted to avoid. Before the transaction between United Rentals and NES Trench closed, NES Trench asked its employees to sign a noncompete agreement. However, the employee refused to sign a new noncompete agreement in favor of United Rentals. *Id.* at 1056.

Dissatisfied with circumstances in which he found himself, the employee then left United Rentals/NES Trench and went to work for Traffic Controls. *Id.* United Rentals then filed suit against the employee to enforce the terms of the agreement he signed in favor of NES Trench. The trial court enforced the NES Trench agreement which led the employee and Traffic Controls (his new employer) to appeal. The Nevada Supreme Court reversed the decision of the trial court.

The Supreme Court declined to enforce

the NES Trench agreement holding that the agreement could not be assigned to United Rentals. The Court declined to allow the contract to be assigned because the agreement did not expressly permit it to be assigned. Indeed, to reach its decision, the Nevada Supreme Court stated:

*Burkhardt's covenant did not contain an assignment clause. While some courts have concluded that such an omission does not bar assignment, a reading of assignability into the covenant is contrary to the intentions of the original parties to it. As we have stated, if no ambiguity exists in a contract, "the words of the contract must be taken in their usual and ordinary signification." NES, as the drafter of the covenant, was in the best position to negotiate for an assignment clause. However, for whatever reason, it chose not to do so. The plain meaning of the contract was for the benefit of NES and Burkhardt, not their assigns and successors.*

*Id.* at 1058 (footnotes omitted). The Nevada Supreme Court was unwilling to inject an assignment clause into a contract when none was there before. Further, the Nevada Supreme Court makes clear that the former employer could very well have negotiated for the right to assign the covenant not to compete.

The facts of Traffic Controls seemed to mandate some relief for the employee



who found himself working for the company that, at every opportunity, he expressed his dislike and his desire never to work for or with the company.

Nevada's merger statute provides that title to all property of the merging constituent entity is vested in the surviving entity. NRS 92A.250. Still further, Nevada's merger statute is designed to facilitate mergers:

*The provisions of NRS 92A.3000-92A were added to Nevada's statutes by the 1995 Legislature. They are patterned after, or are identical to, the provisions of the 1984 Model Business Corporations Act ("Model Act"). In turn, the Model Act is based upon case law from Delaware and New York. The Model Act and Nevada's statutes are designed to facilitate mergers...*

*Cohen v. Mirage Resorts, Inc.*, 119 Nev. 1, 10, 62 P.3d 720, 726 (2003).

To view the full article please visit:  
[www.blacklobellolaw.com](http://www.blacklobellolaw.com).



## Nevada's Domestic Partners Struggle Against the Marriage Standard

Amy M. Friedlander, Esq.

The Nevada Domestic Partnership Act took effect in Nevada on October 1, 2009. Under this Act, a domestic partnership is considered a civil contract that gives domestic partners the same rights, protections, benefits, responsibilities, and obligations as parties in any other civil contract. However, according to Section 21 Article 1 of the Nevada Constitution, only a marriage between a man and a woman can be recognized and given effect in this state. Essentially, Nevada's state constitution places a ban on recognizing same-sex unions as actual "marriages." Yet, the Act itself seeks to provide rights and protections for those who register as domestic partners even if those rights and protections are not exactly the same as those afforded the standard "married" man and woman.

Many states have passed acts similar to Nevada's Domestic Partnership Act. Despite these state laws, the federal government operates under the Federal Defense of Marriage Act. Under this Act, "no marriage shall be recognized except for that between a man and a woman," and applies to policies that are federally mandated or federally regulated. Examples include Social Security benefits, survivor benefits, estate and gift taxes, and personal income tax filings which are not subject to state domestic partnership laws. Rather, "spouses" and "marriages" are viewed as concepts defined under federal act as only being between a man and a woman. This creates a problem for those who are registered within a state as domestic partners. Many times, aspects of day-to-day life are controlled by federal laws that do not recognize the partnership.

Within Nevada, one of the most significant issues facing domestic partnership laws is whether family courts have jurisdiction over domestic partnership matters. On December 24, 2009, the Nevada Supreme Court handed down the case Landreth v. Malik (125 Nev. Adv. Op. 61). Under the Landreth case, family court proceedings are "limited to those primarily concerning divorce, child custody or support, guardianship, and other family matters." Specifically, family court judges do not have jurisdiction over property disputes when property was acquired during a non-married relationship and if the couple does not have children. As a result, because domestic partners are not considered "married," any property division disputes that arise between domestic partners are not currently litigated in family court.

In conclusion, while the Nevada Domestic Partnership Act seeks to confer additional rights and protections to those who enter into domestic partnerships, litigants entering into such partnerships still face challenges on both the federal level and within the state of Nevada. &



## Health Care Reform Changes & Effects

Tiffany N. Ballenger, Esq.

Medicare, which debuted in 1965, currently covers 38 million Americans. However, the recently passed health care reform legislation will not significantly change the way Medicare operates. Americans over the age of 65 will continue to receive coverage. Furthermore, both hospitals and health care providers will continue to be paid per procedure, which remains a much-debated "flaw" in the system.

The benefits of the new health care reforms ensure that seniors will receive more preventative services under Medicare. Also, the often-maligned Medicare "donut hole" will begin to be filled, which, unfortunately will take a few years to be fully rectified. In 2010, Medicare prescription drug beneficiaries will get a rebate of \$250 to help fill the "donut hole." In 2011, these folks will

## Attorney Spotlight

Ronald E. Gillette, Esq.

Abe Geller, Editor for the YHBS! Newsletter, sits down with Mr. Gillette for an exclusive interview.

**AG: Ron, what are your primary areas of legal practice?**

REG: My primary practice areas are Real Estate and Construction Law, Commercial Law, and Business Law.

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

REG: I graduated law school in 1992 and clerked in the District Court before entering private practice in 1994.

**AG: In all of the cases you've been involved in, which one has affected you the most?**

REG: I can't recall one seminal case that has served as the landmark of my career. I try to learn from everything that has occurred in the cases I've handled which helps me deal with new matters. However, if I had to pick one, it would be one of the earliest cases I handled. A crane collapsed in Laughlin, Nevada in 1993 resulting in

*Continued on Page 4*



receive half-off name-brand drugs while in the "donut hole." By 2020, the prescription drug cap is set to be eliminated entirely.

Unfortunately, Medicare Advantage plans may soon be cutting benefits and increasing costs. Also, until 2019, Medicare workers who earn more than \$85,000 per year will pay higher premiums under Part B.

**Small Business:**

Starting this year, the new laws will provide tax credits to assist small businesses in purchasing coverage for their employees. For these purposes, a "small business" is defined as having 50 or fewer employees. By 2014, businesses with more than 50 employees MUST provide coverage for these workers or face a penalty.

*Continued on Page 4*

# Black & LoBello Welcomes Thomas G. Grace, Esq.

Thomas G. Grace graduated from Kenyon College (A.B. with Distinction, 1989) and DePaul University School of Law (J.D., 1992) where he was the Managing Editor of the Business Law Journal. Since graduating from law school, Mr. Grace has litigated cases across the country from California to Maryland, in both state and federal court, and has argued before the Ninth Circuit Court of Appeals.



Mr. Grace's practice is focused on trade secret, non-compete and employee disloyalty litigation. He has represented a diverse group of publicly traded and closely held corporations in trade secret litigation including companies engaged in drug discovery, software development, market research, energy brokerage, mortgage brokerage, banking, accounting, printing, paint manufacturing, and food and medical equipment distribution. Mr. Grace regularly provides assistance to clients

with the identification of company trade secrets and the development of appropriate protection plans. The plans include confidentiality, non-compete and non-solicitation agreements, as well as various provisions for employee handbooks and company policies.

Outside of the trade secret/employee disloyalty area, Mr. Grace has substantial experience in complex commercial, business tort and intellectual property litigation where he has represented

numerous national corporations involving a variety of claims including breach of contract, tortious interference with contract and business relationships, breach of fiduciary duty, fraud, conspiracy, and unfair competition.

As part of his practice development, Mr. Grace is a regular speaker and author:

Speaker: ABA Corporate Counsel Seminar, When Your Key Employee And/Or Trade Secrets Suddenly Leaves For Your Competitor: Options and Strategies (Feb. 2003); ABA Corporate Counsel Seminar,

Employee Raiding: What to Do When the Pied Piper Pipes (Feb. 2007); Nevada Bar Assoc., IP Law Update – Injunctive Relief Strategies (Nov. 2005); Louisville Bar Assoc., Trade Secret Protection (Mar. 2004); Louisville Bar Assoc., The Law of Unfair Competition and Related Intellectual Property Issues: Covenants Not to Compete and Employee Disloyalty (May 2004).

Mr. Grace has also made presentations to private organizations, including the National Coalition of Pharmaceutical Distributors (August 2009) and the Nevada Chapter of the Association of Corporate Counsel (January 2010), regarding non-compete agreements and trade secrets.

Author: Red Rover Red Rover Let My Competitor's Employees Come Over: Is Employee "Raiding" Its Own Cause of Action, Business Torts Journal, Vo.10, No.2 (Spring 2003).

Mr. Grace is a member of the State Bar of Illinois (November 1992), United States District Court – No. Dist. Ill. Trial Bar (October 1997) and the Nevada Bar Association (2006), the Sixth and Ninth Circuit Courts of Appeals (February 1999 and November 2006 respectively). &

## Health Care Reform

Continued from Page 4

### Tax Payers:

Over the next ten years, \$350 billion federal dollars will be spent on subsidies for low-income and middle-class Americans who purchase private or independent insurance. The goal of these subsidies is to foster a marketplace in which insurers compete against each other to offer the most coverage at the lowest rate. These subsidies not only benefit the consumer but should also lower administrative costs.

However, the health care industry's real problem is that insurance rates have been steadily rising due to the astronomical rate of increase in health care costs.

Reasons for this include an inefficient payment system and a rapid increase in the number and expense of technological breakthroughs.

Slowing the growth rate of health care costs is the only real way to truly reform our system. Unfortunately, this law does not necessarily accomplish that goal. Nevertheless, many economists and politicians hope this law is a step in the right direction. &

## Attorney Spotlight

Continued from Page 4

three deaths. I was involved in defending the ironworker subcontractors who were dismantling equipment which was being moved by the crane. I definitely learned a great deal about litigation, strategy,

deposition and discovery work, as well as dynamic physics and the mechanics of a lattice boom truck crane.

**AG: What advice would you give to a new lawyer trying to build a career?**

**REG:** Understand that law practice is as much a business venture as it is a profession – that you cannot build a career unless you develop a sound business model for evaluating cases, maintaining client relations, and administering files in a timely manner.

**AG: What is the best part of your job?**

**REG:** Interacting with the clients to meet their legal objectives. &

To learn more about Mr. Gillette and other Black & LoBello attorneys, visit our website and click on the TEAM PROFILES tab.



*You Have Been Served!* is a periodic publication of Black & LoBello and should not be construed as legal advice or opinion in regard to any particular set of facts or circumstances. The content of this newsletter is intended for general information purposes only. You are urged to seek counsel concerning your specific situation including any legal questions you may have. The attorneys at Black & LoBello are available for representation on a wide variety of legal issues. We are interested in your opinion. If you have suggestions regarding how we can better improve *You Have Been Served!*, please let us know by contacting your Black & LoBello attorney or emailing us at [editor@blacklobellolaw.com](mailto:editor@blacklobellolaw.com). &

# BLACK & LOBELLO

10777 WEST TWAIN AVENUE  
THIRD FLOOR  
LAS VEGAS, NEVADA 89135  
PH. (702)869-8801  
FAX (702)869-2669

[WWW.BLACKLOBELLOLAW.COM](http://WWW.BLACKLOBELLOLAW.COM)