McGlinchey Stafford and the Manufactured Housing Institute (MHI) are pleased to bring you the Manufactured Housing Law Update. With content prepared by McGlinchey Stafford's nationally-recognized consumer financial services team, the Update focuses on legal and regulatory actions in the manufactured housing industry. More about MHI and McGlinchey Stafford can be found at the end of the Update.

WELCOME!

It is now April. While they say "April showers bring May flowers," here in the Northeast we have no idea what you are talking about because we are busy trying to figure out what April snow brings.

Enough about April. This is, after all, the March Manufactured Housing Law Update.

As you will see, March Madness was not limited to the Loyola-Chicago Ramblers, who we know you did not have going to the Final Four. As you will see, the legislatures in the various states were very busy this month. While we did not go back to verify making the following statement completely unreliable: this is the longest Manufactured Housing Law Update on record.

To that end, Virginia certainly won the March Manufactured Housing Law Update, with several pieces of legislation impacting communities.

Other items to note are fee holidays in Colorado, but act quick because the holiday expires on May 15. In addition, there are several titling bills we summarize, including electronic titling bills in a number of states and an overhaul of Mississippi's conversation procedure.

Enjoy the Update and the Spring weather!!

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COMMUNITIES

LEGISLATION

Arizona

Change in use – Relocation

2018 AZ H 2168. Enacted 3/27/2018. Effective 7/21/2018 (projected).

This bill amends Ariz. Rev. Code Ann. § 33-1476.01, Change in use; notices; compensation for moving expenses; payments by the landlord; applicability, to provide that, if a tenant is required to move due to a change in use or redevelopment of the mobile home park, the tenant may collect payment from the mobile home relocation fund for the lesser of the actual moving expenses of relocating the mobile home to a new location that is within a one hundred-mile (formerly, fifty-mile) radius of the vacated mobile home park or the maximum of seven thousand five hundred dollars for a single section mobile home or twelve thousand five hundred dollars for a multisection mobile home.

The bill amends Ariz. Rev. Code Ann. § 33-1476.04, Relocations due to rent increase; mobile home relocation fund; applicability, to provide that, on approval, the tenant is eligible for the lesser of the actual moving expenses of relocating the mobile home or seven thousand five hundred dollars (formerly, $5,000) for a single-section mobile home or twelve thousand five hundred dollars (formerly, $10,000) for a multisection mobile home. Compensable moving expenses include the cost of taking down, moving and setting up the mobile home in the new location if the mobile home is relocated to a residential location within a one hundred-mile radius of the vacated mobile home park.

The bill amends Ariz. Rev. Code Ann. § 33-1476.05, Relocations due to change in age-restricted community use; payment from mobile home relocation fund; applicability, to provide that, on approval, the tenant is eligible for the lesser of the actual moving expenses of relocating the mobile home or seven thousand five hundred dollars (formerly, $5,000) for a single-section mobile home or twelve thousand five hundred dollars (formerly, $10,000) for a multisection mobile home. Compensable moving expenses include the cost of taking down, moving and setting up the mobile home in the new location if the mobile home is relocated to another age-restricted community within a one hundred-mile radius of the vacated mobile home park.

The bill amends Ariz. Rev. Code Ann. § 33-1485.01, Removal of mobile home from mobile home park; violation; joint and several liability, to provide that a tenant or a tenant's successor in interest shall provide the landlord with a written notification of intent to remove a mobile home from a mobile home space. The notification shall include the date the mobile home will be removed from the mobile home park, the name, address and telephone number of the person or entity that will be removing the mobile home from the mobile home park and the name, address and telephone number of the person or entity that will be the responsible party for restoring the mobile home space in accordance with the rental agreement and the mobile home park rules and regulations. If the responsible party is not licensed by the Arizona department of housing or the registrar of contractors, the landlord may require a security deposit or surety bond of not more than two thousand five hundred (formerly, $1,000) dollars minus the amount of any security deposit that was collected at the beginning of the tenant's tenancy. The security deposit or surety bond shall be paid or provided before work begins on restoring the mobile home space and shall secure the cost of restoration if the responsible party fails to completely restore the mobile home space. The landlord shall provide an accounting of any security deposit as prescribed in section 33-1431, subsection C.

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LEGISLATION

Idaho

Action for possession

2018 ID H 359. Enacted 3/19/2018. Effective 7/1/2018.

This bill amends Idaho Code § 6-310, ACTION FOR POSSESSION -- COMPLAINT – SUMMONS, to revise a provision regarding what shall be stated in a verified complaint.

The bill provides that, in an action for possession against a defendant alleged to be occupying property as a result of forcible detainer, a property owner shall state in a verified complaint:

(e) That demand has been made to the defendant for surrender of the property, and the defendant has refused to surrender the property to the former occupant or property owner (formerly: That all notices required by law have been served upon the defendant in the required manner).

PROPOSED RULE

Michigan

Master metering

This rule adds Mich. Admin. r. 460.20335, Master meter systems.

The rule provides:

(1) The definition of "master meter system" contained in 49 C.F.R. §191.3, which is adopted by reference in R 460.20606, is superseded by the following:

(a) As used in these rules, "master meter system" means a distribution pipeline system that receives metered gas from an outside source and that is used for distributing gas within a definable area, including but not limited to, a mobile home park, vacation rental housing complex, apartment complex, college campus, or prison. The master meter system supplies the ultimate consumer of the gas whether the gas is purchased or supplied at no cost.

(b) As used in this rule, "distribution pipeline system" means a system of main and service lines including all parts of those physical facilities through which gas moves in transportation, including but not limited to, pipe, valves, and other appurtenance attached to pipe, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies. The distribution pipeline system ends at the outlet of the sub-meter, the outlet of the service regulator, or the building wall, whichever is furthest downstream.

(c) As used in this rule, "ultimate consumer" means a third-party end-user occupying an area containing distribution piping from the distribution pipeline system who routinely consumes gas from the system.

(d) As used in this rule, "sub-meter" means 1 of 2 or more meters for measuring different sections of gas supply that is located downstream from a master meter.

(2) An operator shall not supply gas to any new master meter system established on or after January 1, 2019 unless the commission has provided a waiver.

(3) The design, construction, inspection, and testing of additions to existing master meter systems are the responsibility of the operator with the direct costs paid by the owner, unless the commission has provided a waiver.

(4) Unless the commission has provided a waiver, for master meter systems that were established before January 1, 2019, an operator shall make efforts to negotiate an operations and maintenance agreement with the master meter system owner that ensures compliance with all applicable requirements of the gas safety standards for that system. The direct cost to the operator for services performed under this agreement, including an appropriate administrative overhead, may be charged to the owner of the master meter system. The monthly charge per service line must not exceed the

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residential meter charge or customer charge included in the operator's tariffs on January 1, 2018. An operator shall apply for any necessary waivers under this subrule by January 1, 2020.

(5) Beginning March 15, 2019, all operators shall provide an annual report to the commission describing the location, type of facility served, number of services at each known master meter system in service at the end of the previous calendar year, and the names and contact information for all known master meter system owners with whom the operator is unable to execute an operations and maintenance contract.

LEGISLATION

Utah

Forcible entry and detainer

2018 UT S 159. Enacted 3/19/2018. Effective 5/7/2018.

This bill amends provisions concerning Forcible Entry and Detainer.

The bill amends Utah Code Ann. § 78B-6-805, Notice -- How served, to provide that the notice may be served by sending a copy through registered mail, certified mail, or an equivalent means, addressed to the tenant at the tenant's residence, leased property, or usual place of business.

If the tenant is absent from the residence, leased property, or usual place of business, by leaving a copy with a person of suitable age and discretion at the tenant's residence, leased property, or usual place of business.

The bill amends Utah Code Ann. § 78B-6-807. Allegations permitted in complaint – Time for appearance – Service, to provide that if the unlawful detainer charged is after default in the payment of rent or other amounts due, the complaint shall state the amount of rent due or other amounts due (adding, or other amounts due).

A claim for unlawful detainer brought by counterclaim shall be served to any opposing party in accordance with Utah Rules of Civil Procedure, and any response required shall be due within the timelines stated under Subsection (3)(a).

Utah Code Ann. § 78B-6-811, Judgment for restitution, damages, and rent -- Immediate enforcement – Remedies, has been amended to provide that, in an action under this chapter, the court shall (formerly, may) award costs and reasonable attorney fees to the prevailing party.

The bill amends Utah Code Ann. § 78B-6-812, Order of restitution -- Service -- Enforcement -- Disposition of personal property – Hearing, to provide that personal property removed and stored is considered abandoned property and subject to Section 78B-6-816 (formerly, personal property removed and stored shall, after 15 calendar days, be considered abandoned property and subject to Section 78B-6-816).

Utah Code Ann. § 78B-6-815, Abandonment, has been amended to add that abandonment is established as a matter of law if the owner has reason to believe that the presumption of abandonment has been met, the owner serves the tenant with a declaration of abandonment, and the tenant fails to dispute or rebut the declaration of abandonment in accordance with this Subsection.

The tenant may be served with a declaration of abandonment that includes at least a contact address for the owner, contains a brief factual basis supporting the owner's reasonable belief that the presumption of abandonment under Subsection (1) has been met, and states the date and time of service and includes the following language, or language that is substantially similar: "It is believed that these premises are abandoned and the owner is seeking to regain possession of the premises. If a tenant in legal possession of the premises has not abandoned the premises, the tenant must dispute abandonment in writing within 24 hours of

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service of this declaration of abandonment by providing a copy to the owner at the contact address included with this declaration of abandonment. If written notice is not served on the owner within 24 hours, the owner may retake possession of the premises." The 24-hour period stated in this Subsection (2)(a) does not include a Saturday, a Sunday, or a holiday during which the Utah state courts are closed.

Service of the declaration of abandonment by the owner and any dispute or rebuttal by the tenant shall be made pursuant to Section 78B-6-805.

If the tenant fails to dispute the declaration of abandonment in writing by serving notice to the owner within 24 hours of being served a declaration of abandonment, excluding a Saturday, a Sunday, or a holiday during which the Utah state courts are closed, the declaration of abandonment serves as prima facia evidence that the tenant has vacated and abandoned the premises.

(d) The tenant bears the burden to rebut an abandonment that is established by a declaration of abandonment by clear and convincing evidence.

LEGISLATION
Virginia
Unlawful detainer

2018 VA H 856. Enacted 3/2/2018. Effective 7/1/2018.

This bill amends Va. Code Ann. § 8.01-129 to provide that, in any unlawful detainer case filed under Section 8.01-126, if a judge grants the plaintiff a judgment for possession of the premises, upon request of the plaintiff, the judge shall further order that the writ issue immediately upon entry of judgment for possession. In such case, the clerk shall deliver the writ to the sheriff, who shall then, at least 72 hours prior to execution of such writ, serve notice of intent to execute the writ, including the date and time of eviction, as provided in Section 8.01-470. In no case, however, shall the sheriff evict the defendant from the dwelling unit prior to the expiration of the defendant's 10-day appeal period. If the defendant perfects an appeal, the sheriff shall return the writ to the clerk who issued it.

LEGISLATION
Virginia
Tenant and landlord responsibilities

2018 VA H 857. Enacted 3/9/2018. Effective 7/1/2018.

This bill amends Va. Code Ann. § 55-225.4, Tenant to maintain dwelling unit, to add that, in addition to the provisions of the rental agreement, the tenant shall:

13. Be financially responsible for the added cost of treatment or extermination due to the tenant's unreasonable delay in reporting the existence of any insects or pests and be financially responsible for the cost of treatment or extermination due to the tenant's fault in failing to prevent infestation of any insects or pests in the area occupied; and

14. Use reasonable care to prevent any dog or other animal in possession of the tenant, authorized occupants, or guests or invitees from causing personal injuries to a third party in the dwelling unit or on the premises, or property damage to the dwelling unit or the premises.

The bill amends Va. Code Ann. § 55-225.6, Inspection of dwelling unit, to provide that the landlord shall, within five days after occupancy of a dwelling unit, submit a written report to the tenant, for his safekeeping, itemizing damages to the dwelling unit existing at the time of occupancy, which record shall be deemed correct unless the tenant objects thereto in writing within five days after receipt thereof.

Formerly, this section provided that the landlord shall, unless the rental agreement provides otherwise, within five days after occupancy of a dwelling unit, submit a

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written report to the tenant, for his safekeeping, itemizing damages to the dwelling unit existing at the time of occupancy, which record shall be deemed correct unless the tenant objects thereto in writing within five days after receipt thereof.

The bill adds Va. Code Ann. § 55-225.12:1, Wrongful failure to supply heat, water, hot water, or essential services, to provide:

A. If contrary to the rental agreement or provisions of this chapter, the landlord willfully or negligently fails to supply heat, running water, hot water, electricity, gas, or other essential service, the tenant must serve a written notice on the landlord specifying the breach if acting under this section and, in such event, and after a reasonable time allowed for the landlord to correct such breach, may:

1. Recover damages based upon the diminution in the fair rental value of the dwelling unit; or

2. Procure reasonable substitute housing during the period of the landlord's noncompliance, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance, as determined by the court.

B. If the tenant proceeds under this section, he shall be entitled to recover reasonable attorney fees; however, he may not proceed under Section 55-225.13 as to that breach. The rights of the tenant under this section shall not arise until he has given written notice to the landlord; however, no rights arise if the condition was caused by the deliberate or negligent act or omission of the tenant, a member of his family, or other person on the premises with his consent.

The bill also adds Va. Code Ann. §55-225.13:1, Landlord's noncompliance as defense to action for possession for nonpayment of rent, to provide:

A. In an action for possession based upon nonpayment of rent or in an action for rent by a landlord when the tenant is in possession, the tenant may assert as a defense that there exists upon the leased premises a condition that constitutes or will constitute a fire hazard or a serious threat to the life, health, or safety of occupants thereof, including but not limited to a lack of heat or running water or of light or of electricity or adequate sewage disposal facilities or an infestation of rodents, or a condition that constitutes material noncompliance on the part of the landlord with the rental agreement or provisions of law. The assertion of any defense provided for in this section shall be conditioned upon the following:

1. Prior to the commencement of the action for rent or possession, the landlord or his agent was served a written notice of the aforesaid condition or conditions by the tenant, or was notified by a violation or condemnation notice from an appropriate state or municipal agency, but the landlord has refused, or having a reasonable opportunity to do so, has failed to remedy the same. For the purposes of this subsection, what period of time shall be deemed to be unreasonable delay is left to the discretion of the court, except that there shall be a rebuttable presumption that a period in excess of 30 days from receipt of the notification by the landlord is unreasonable; and

2. The tenant, if in possession, has paid into court the amount of rent found by the court to be due and unpaid, to be held by the court pending the issuance of an order under subsection C.

B. It shall be a sufficient answer to the defense provided for in this section if the landlord establishes that the conditions alleged in the defense do not in fact exist; or such conditions have been removed or remedied; or such conditions have been caused by the tenant or members of the family of such tenant or of his or their guests; or the tenant has unreasonably refused entry by the landlord to the premises for the purposes of correcting such conditions.

C. The court shall make findings of fact upon any defense raised under this section or the answer to any defense

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and, thereafter, shall issue such order as may be required including any one or more of the following:

1. An order to set-off to the tenant as determined by the court in such amount as may be equitable to represent the existence of any condition set forth in subsection A that is found by the court to exist;

2. Terminate the rental agreement or order surrender of the premises to the landlord; or

3. Refer any matter before the court to the proper state or municipal agency for investigation and report and grant a continuance of the action or complaint pending receipt of such investigation and report. When such a continuance is granted, the tenant shall deposit with the court any rents that will become due during the period of continuance, to be held by the court pending its further order, or the court, in its discretion, may use such funds to pay a mortgage on the property in order to stay a foreclosure, to pay a creditor to prevent or satisfy a bill to enforce a mechanic's or materialman's lien, or to remedy any condition set forth in subsection A that is found by the court to exist.

D. If it appears that the tenant has raised a defense under this section in bad faith or has caused the violation or has unreasonably refused entry to the landlord for the purpose of correcting the condition giving rise to the violation, the court, in its discretion, may impose upon the tenant the reasonable costs of the landlord, including court costs, the costs of repair where the court finds the tenant has caused the violation, and reasonable attorney fees.

The bill amends Va. Code Ann. § 55-225.19, Security deposits, by deleting the limitation "Unless the rental agreement provides otherwise."

The bill provides that a landlord may not demand or receive a security deposit, however denominated, in an amount or value in excess of two months' periodic rent. Upon termination of the tenancy, such security deposit, whether it is property or money held by the landlord as security as hereinafter provided, may be applied solely by the landlord (i) to the payment of accrued rent and including the reasonable charges for late payment of rent specified in the rental agreement; (ii) to the payment of the amount of damages which the landlord has suffered by reason of the tenant's noncompliance with Section 55-225.4, less reasonable wear and tear; (iii) to other damages or charges as provided in the rental agreement; or (iv) to actual damages for breach of the rental agreement pursuant to Section 55-225.48. The security deposit and any deductions, damages, and charges shall be itemized by the landlord in a written notice given to the tenant, together with any amount due the tenant, within 45 days after the termination of the tenancy. As of the date of the termination of the tenancy or the date the tenant vacates the dwelling unit, whichever shall occur last, the tenant shall be required to deliver possession of the dwelling unit to the landlord. If the termination date is prior to the expiration of the rental agreement or any renewal thereof, or the tenant has not given proper notice of termination of the rental agreement, the tenant shall be liable for actual damages pursuant to Section 55-225.48, in which case, the landlord shall give written notice of the disposition of the security deposit within the 45-day period but may retain any security balance to apply against any financial obligations of the tenant to the landlord pursuant to this chapter or the rental agreement. If the tenant fails to vacate the dwelling unit as of the termination of the tenancy, the landlord may file an unlawful detainer action pursuant to Section 8.01-126.

Va. Code Ann. § 55-225.22:1, Prohibited provisions in rental agreements, has been added to provide:

A. A rental agreement shall not contain provisions that the tenant:

1. Agrees to waive or forego rights or remedies under this chapter;

2. Agrees to waive or forego rights or remedies pertaining to the 120-day conversion or rehabilitation

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notice required in the Condominium Act (Section 55-79.39 et seq.), the Virginia Real Estate Cooperative Act (Section 55-424 et seq.), or Chapter 13 (Section 55-217 et seq.), except where the tenant is on a month-to-month lease pursuant to Section 55-222;

3. Authorizes any person to confess judgment on a claim arising out of the rental agreement;

4. Agrees to pay the landlord's attorney fees except as provided in this chapter;

5. Agrees to the exculpation or limitation of any liability of the landlord to the tenant arising under law or to indemnify the landlord for that liability or the costs connected therewith;

6. Agrees as a condition of tenancy in public housing to a prohibition or restriction of any lawful possession of a firearm within individual dwelling units unless required by federal law or regulation; or

7. Agrees to both the payment of a security deposit and the provision of a bond or commercial insurance policy purchased by the tenant to secure the performance of the terms and conditions of a rental agreement, if the total of the security deposit and the bond or insurance premium exceeds the amount of two months' periodic rent.

B. A provision prohibited by subsection A included in a rental agreement is unenforceable. If a landlord brings an action to enforce any of the prohibited provisions, the tenant may recover actual damages sustained by him and reasonable attorney fees.

The bill amends Va. Code Ann. § 55-225.24, Landlord may obtain certain insurance for tenant, to add that, if a tenant allows his renter's insurance policy required by the rental agreement to lapse for any reason, the landlord may provide any landlord's renter's insurance coverage to such tenant. The tenant shall be obligated to pay for the cost of premiums for such insurance as rent or as otherwise provided herein until the tenant has provided written documentation to the landlord showing that the tenant has reinstated his own renter's insurance coverage.

Va. Code Ann. § 55-225.26, Confidentiality of tenant records, has been amended to add that no landlord or managing agent shall release information about a tenant or prospective tenant in the possession of the landlord to a third party unless:

14. The information is requested by an employee or independent contractor of the United States to obtain census information pursuant to federal law.

The bill amends Va. Code Ann. § 55-225.30, Notice to tenants for insecticide or pesticide use, to add that a violation by the tenant of this section may be remedied by the landlord in accordance with Section 55-225.46 or by notice given by the landlord requiring the tenant to remedy under Section 55-225.43, as applicable.

The bill adds Va. Code Ann. § 55-225.49, Early termination of rental agreement by military personnel, to provide:

A. Any member of the Armed Forces of the United States or a member of the National Guard serving on full-time duty or as a Civil Service technician with the National Guard may, through the procedure detailed in subsection B, terminate his rental agreement if the member (i) has received permanent change of station orders to depart 35 miles or more (radius) from the location of the dwelling unit; (ii) has received temporary duty orders in excess of three months' duration to depart 35 miles or more (radius) from the location of the dwelling unit; (iii) is discharged or released from active duty with the Armed Forces of the United States or from his full-time duty or technician status with the National Guard; or (iv) is ordered to report to government-supplied quarters resulting in the forfeiture of basic allowance for quarters.

B. Tenants who qualify to terminate a rental agreement pursuant to subsection A shall do so by serving on the landlord a written notice of termination to be effective on a date stated therein, such date to be not less than 30

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days after the first date on which the next rental payment is due and payable after the date on which the written notice is given. The termination date shall be no more than 60 days prior to the date of departure necessary to comply with the official orders or any supplemental instructions for interim training or duty prior to the transfer. Prior to the termination date, the tenant shall furnish the landlord with a copy of the official notification of the orders or a signed letter confirming the orders from the tenant's commanding officer.

The landlord may not charge any liquidated damages.

C. Nothing in this section shall affect the tenant's obligations established by Section 55-225.4.

The fill further adds Va. Code Ann. § 55-225.50, Failure to deliver possession, to provide:

If the landlord willfully fails to deliver possession of the dwelling unit to the tenant, rent abates until possession is delivered and the tenant may (i) terminate the rental agreement upon at least five days' written notice to the landlord and, upon termination, the landlord shall return all prepaid rent and security deposits or (ii) demand performance of the rental agreement by the landlord. If the tenant elects, he may file an action for possession of the dwelling unit against the landlord or any person wrongfully in possession and recover the damages sustained by him. If a person's failure to deliver possession is willful and not in good faith, an aggrieved person may recover from that person the actual damages sustained by him and reasonable attorney fees.

The bill amends Va. Code Ann. § 55-246.1, Who may recover rent or possession, to provide that a landlord may obtain a judgment for rent or damages, including actual damages for breach of the rental agreement, or for final rent and damages under Section 8.01-128, in any general district court where venue is proper.

Also provides that nothing shall be construed as preventing a non-lawyer from requesting relief from the court as provided by law or statute when such non-lawyer is before the court on one of the actions specified herein.

The bill amends Va. Code Ann. § 55-248.7:2, Landlord may obtain certain insurance for tenant, to provide that, if a tenant allows his renter's insurance policy required by the rental agreement to lapse for any reason, the landlord may provide any landlord's renter's insurance coverage to such tenant. The tenant shall be obligated to pay for the cost of premiums for such insurance as rent or as otherwise provided herein until the tenant has provided written documentation to the landlord showing that the tenant has reinstated his own renter's insurance coverage.

Va. Code Ann. § 55-248.9:1, Confidentiality of tenant records, has been amended to add that no landlord or managing agent shall release information about a tenant or prospective tenant in the possession of the landlord to a third party unless:

14. The information is requested by an employee or independent contractor of the United States to obtain census information pursuant to federal law.

The bill amends Va. Code Ann. § 55-248.13:3, Notice to tenants for insecticide or pesticide use, to provide that a violation by the tenant of this section may be remedied by the landlord in accordance with Section 55-248.32 or by notice given by the landlord requiring the tenant to remedy under Section 55-248.31, as applicable.

The bill amends Va. Code Ann. § 55-248.15:1, Security deposits, to add that, upon termination of the tenancy, such security deposit, whether it is property or money held by the landlord as security as hereinafter provided may be applied solely by the landlord (iv) to actual damages for breach of the rental agreement pursuant to Section 55-248.35.

The bill adds that, as of the date of the termination of the tenancy or the date the tenant vacates the dwelling unit,

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whichever shall last occur, the tenant shall be required to deliver possession of the dwelling unit to the landlord. If the termination date is prior to the expiration of the rental agreement or any renewal thereof, or the tenant has not given proper notice of termination of the rental agreement, the tenant shall be liable for actual damages pursuant to Section 55-248.35, in which case, the landlord shall give written notice of security deposit disposition within the 45-day period but may retain any security balance to apply against any financial obligations of the tenant to the landlord pursuant to this chapter or the rental agreement. If the tenant fails to vacate the dwelling unit as of the termination of the tenancy, the landlord may file an unlawful detainer action pursuant to Section 8.01-126.

Va. Code Ann. § 55-248.16, Tenant to maintain dwelling unit, has been amended to add that, in addition to the provisions of the rental agreement, the tenant shall:

15. Use reasonable care to prevent any dog or other animal in possession of the tenant, authorized occupants, or guests or invitees from causing personal injuries to a third party in the dwelling unit or on the premises, or property damage to the dwelling unit or the premises.

Finally, the bill adds Va. Code Ann. § Section 55-248.21:3, Notice to tenant in event of foreclosure, to provide:

A. The landlord of a dwelling unit used as a single-family residence as defined in Section 55-248.4 shall give written notice to the tenant or any prospective tenant of such dwelling unit that the landlord has received a notice of a mortgage default, mortgage acceleration, or foreclosure sale relative to the loan on the dwelling unit within five business days after written notice from the lender is received by the landlord. This requirement shall not apply (i) to any managing agent who does not receive a copy of such written notice from the lender or (ii) if the tenant or prospective tenant provides a copy of the written notice from the lender to the landlord or the managing agent.

B. If the landlord fails to provide the notice required by this section, the tenant shall have the right to terminate the rental agreement upon written notice to the landlord at least five business days prior to the effective date of termination. If the tenant terminates the rental agreement, the landlord shall make disposition of the tenant's security deposit in accordance with law or the provisions of the rental agreement, whichever is applicable.

C. If there is in effect at the date of the foreclosure sale a tenant in a residential dwelling unit foreclosed upon, the foreclosure shall act as a termination of the rental agreement by the owner. In such case, the tenant may remain in possession of such dwelling unit as a month-to-month tenant on the terms of the terminated rental agreement until the successor owner gives a notice of termination of such month-to-month tenancy. If the successor owner elects to terminate the month-to-month tenancy, written notice of such termination shall be given in accordance with the rental agreement or the provisions of Section 55-222 or 55-248.6, as applicable.

D. Unless or until the successor owner terminates the month-to-month tenancy, the terms of the terminated rental agreement remain in effect except that the tenant shall make rental payments (i) to the successor owner as directed in a written notice to the tenant in this subsection; (ii) to the managing agent of the owner, if any, or successor owner; or (iii) into a court escrow account pursuant to the provisions of Section 55-248.27; however, there is no obligation of a tenant to file a tenant's assertion and pay rent into escrow. Where there is not a managing agent designated in the terminated rental agreement, the tenant shall remain obligated for payment of the rent but shall not be held to be delinquent or assessed a late charge until the successor owner provides written notice identifying the name, address, and telephone number of the party to which the rent should be paid.

E. The successor owner may enter into a new rental agreement with the tenant in the dwelling unit, in which

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case, upon the commencement date of the new rental agreement, the month-to-month tenancy shall terminate.

LEGISLATION
Virginia
Acceptance of payment

2018 VA H 855 and 2018 VA S 197. Enacted 3/9/2018. Effective 7/1/2018.

This bill amends Va. Code Ann. § 55-225.47, Landlord's acceptance of rent with reservation, to provide that the landlord may accept full or partial payment of all rent and receive an order of possession from a court of competent jurisdiction pursuant to an unlawful detainer action filed under Article 13 (Section 8.01-124 et seq.) of Chapter 3 of Title 8.01 and proceed with eviction under Section 55-225.41, provided that the landlord has stated in a written notice to the tenant that any and all amounts owed to the landlord by the tenant, including payment of any rent, damages, money judgment, award of attorney fees, and court costs, would be accepted with reservation and would not constitute a waiver of the landlord's right to evict the tenant from the dwelling unit.

Such notice may (formerly, shall) be included in a written termination notice given by the landlord to the tenant in accordance with Section 55-225.43, and if so included, nothing herein shall be construed by a court of law or otherwise as requiring such landlord to give the tenant subsequent written notice. If the dwelling unit is a public housing unit or other housing unit subject to regulation by the Department of Housing and Urban Development nothing herein shall be construed to require that written notice be given to any public agency paying a portion of the rent under the rental agreement. If a landlord enters into a new written rental agreement with the tenant prior to eviction, an order of possession obtained prior to the entry of such new rental agreement is not enforceable.

Formerly, this provision read:

Such notice shall be included in a written termination notice given by the landlord to the tenant in accordance with Section 55-225.43 or in a separate written notice given by the landlord to the tenant within five business days of receipt of the rent. Unless the landlord has given such notice in a termination notice in accordance with Section 55-225.43, the landlord shall continue to give a separate written notice to the tenant within five business days of receipt of the rent that the landlord continues to accept the rent with reservation in accordance with this section until such time as the violation alleged in the termination notice has been remedied or the matter has been adjudicated in a court of competent jurisdiction. If the dwelling unit is a public housing unit or other housing unit subject to regulation by the Department of Housing and Urban Development, the landlord shall be deemed to have accepted rent with reservation pursuant to this subsection if the landlord gives the tenant the written notice required herein for the portion of the rent paid by the tenant.

The bill also deletes:

(B) Subsequent to the entry of an order of possession by a court of competent jurisdiction but prior to eviction pursuant to Section 55-225.41, the landlord may accept all amounts owed to the landlord by the tenant, including full payment of any money judgment, award of attorney fees, and court costs, and all subsequent rents that may be paid prior to eviction, and proceed with eviction, provided that the landlord has given the tenant written notice that any such payment would be accepted with reservation and would not constitute a waiver of the landlord's right to evict the tenant from the dwelling unit. However, if a landlord enters into a new written rental agreement with the tenant prior to eviction, an order of possession obtained prior to the entry of such new rental agreement is not enforceable. Such notice

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shall be given in a separate written notice given by the landlord within five business days of receipt of payment of such money judgment, attorney fees and court costs, and all subsequent rents that may be paid prior to eviction. If the dwelling unit is a public housing unit or other housing unit subject to regulation by the Department of Housing and Urban Development, the landlord shall be deemed to have accepted rent with reservation pursuant to this subsection if the landlord gives the tenant the written notice required herein for the portion of the rent paid by the tenant. Writs of possession in cases of unlawful entry and detainer are otherwise subject to Section 8.01-471.

The bill makes similar amendments to Va. Code Ann. § 55-248.34:1, Landlord's acceptance of rent with reservation.

LEGISLATION
Virginia
Criminal activity

2018 VA S 451. Enacted 3/19/2018. Effective 7/1/2018.

This bill amends Va. Code Ann. § 15.2-907, Authority to require removal, repair, etc., of buildings and other structures harboring illegal drug use or other criminal activity, to provide that "Corrective action" means (i) taking specific actions with respect to the buildings or structures on property that are reasonably expected to abate criminal blight on such real property, including the removal, repair, or securing of any building, wall, or other structure, or (ii) changing specific policies, practices, and procedures of the real property owner that are reasonably expected to abate criminal blight on real property. A local law-enforcement official shall prepare an affidavit on behalf of the locality that states specific actions to be taken on the part of the property owner that the locality determines are necessary to abate the identified criminal blight on such real property and that do not impose an undue financial burden on the owner.

"Criminal blight" means a condition existing on real property that endangers the public health or safety of residents of a locality and is caused by (i) the regular presence on the property of persons under the influence of controlled substances; (ii) the regular use of the property for the purpose of illegally possessing, manufacturing, or distributing controlled substances; (iii) the regular use of the property for the purpose of engaging in commercial sex acts; or (iv) repeated acts of the malicious discharge of a firearm within any building or dwelling that would constitute a criminal act under Section 18.2-279 or a substantially similar local ordinance if a criminal charge were to be filed against the individual perpetrator of such criminal activity.

Any locality may, by ordinance, provide that:

1. The locality may require the owner of real property to undertake corrective action, or the locality may undertake corrective action, with respect to such property in accordance with the procedures described herein:

a. The locality shall execute an affidavit, citing this section, to the effect that (i) criminal blight exists on the property and in the manner described therein; (ii) the locality has used diligence without effect to abate the criminal blight; and (iii) the criminal blight constitutes a present threat to the public's health, safety, or welfare.

b. The locality shall then send a notice to the owner of the property, to be sent by (i) certified mail, return receipt requested; (ii) hand delivery; or (iii) overnight delivery by a commercial service or the United States Postal Service, to the last address listed for the owner on the locality's assessment records for the property, together with a copy of such affidavit, advising that (a) the owner has up to 30 days from the date thereof to undertake corrective action to abate the criminal blight described in such affidavit and (b) the locality will, if requested to do so, assist the owner in determining and coordinating the appropriate corrective action to abate the criminal blight described in such affidavit. If the

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owner notifies the locality in writing within the 30-day period that additional time to complete the corrective action is needed, the locality shall allow such owner an extension for an additional 30-day period to take such corrective action.

c. If no corrective action is undertaken during such 30-day period, or during the extension if such extension is granted by the locality, the locality shall send by certified mail, return receipt requested, an additional notice to the owner of the property, at the address stated in subdivision b, stating (i) the date on which the locality may commence corrective action to abate the criminal blight on the property or (ii) the date on which the locality may commence legal action in a court of competent jurisdiction to obtain a court order to require that the owner take such corrective action or, if the owner does not take corrective action, a court order to revoke the certificate of occupancy for such property, which date shall be no earlier than 15 days after the date of mailing of the notice. Such additional notice shall also reasonably describe the corrective action contemplated to be taken by the locality. Upon receipt of such notice, the owner shall have a right, upon reasonable notice to the locality, to seek judicial relief, and the locality shall initiate no corrective action while a proper petition for relief is pending before a court of competent jurisdiction.

A criminal blight proceeding pursuant to this section shall be a civil proceeding in a court of competent jurisdiction in the Commonwealth.

Nothing in this section shall be construed to abridge, diminish, limit, or waive any rights or remedies of an owner of property at law or any permits or nonconforming rights the owner may have under Chapter 22 (Section 15.2-2200 et seq.) or under a local ordinance. If an owner in good faith takes corrective action, and despite having taken such action, the specific criminal blight identified in the affidavit of the locality persists, such owner shall be deemed in compliance with this section. Further, if a tenant in a rental dwelling unit, or a tenant on a manufactured home lot, is the cause of criminal blight on such property and the owner in good faith initiates legal action and pursues the same by requesting a final order by a court of competent jurisdiction, as otherwise authorized by this Code, against such tenant to remedy such noncompliance or to terminate the tenancy, such owner shall be deemed in compliance with this section.

LEGISLATION
Virginia
Definition of park

2018 VA H 1047. Enacted 3/23/2018. Effective 7/1/2018.

This bill reduces the number of manufactured homes required on a parcel of land under single or common ownership for purposes of being subject to the Manufactured Home Lot Rental Act.

The bill amends Va. Code Ann. § 55-248.41 to define "Manufactured home park" as a parcel of land under single or common ownership upon which five (formerly, 10) or more manufactured homes are located on a continual, nonrecreational basis together with any structure, equipment, road or facility intended for use incidental to the occupancy of the manufactured homes, but does not include premises used solely for storage or display of uninhabited manufactured homes, or premises occupied solely by a landowner and members of his family.

LEGISLATION
Washington
Source of income - Reimbursement

2017 WA H 2578. Enacted 3/15/2018.

Effective 9/30/2018, this bill adds a new section to Wash. Rev. Code chapter 59.18 to prohibit a landlord from

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refusing to lease, increasing move in amounts, or any other discriminatory act to a prospective tenant solely based on sources of income.

A person in violation of this section shall be held liable in a civil action up to four and one-half times the monthly rent of the real property at issue, as well as court costs and reasonable attorneys' fees.

As used in this section, "source of income" includes benefits or subsidy programs including housing assistance, public assistance, emergency rental assistance, veterans benefits, social security, supplemental security income or other retirement programs, and other programs administered by any federal, state, local, or nonprofit entity. "Source of income" does not include income derived in an illegal manner.

Effective 6/6/2018, the bill also adds a new section to Wash. Rev. Code chapter 43.31 to create, subject to the availability of funds for this purpose, the landlord mitigation program.

The following types of claims related to landlord mitigation for renting private market rental units to low-income tenants using a housing subsidy program are eligible for reimbursement from the landlord mitigation program account:

(a) Up to one thousand dollars for improvements. In order to be eligible for reimbursement, the landlord must pay for the first five hundred dollars for improvements, and rent to the tenant whose housing subsidy program was conditioned on the real property passing inspection. Reimbursement may also include up to fourteen days of lost rental income from the date of offer of housing to the applicant whose housing subsidy program was conditioned on the real property passing inspection until move in by that applicant;

(b) Reimbursement for damages as reflected in a judgment obtained against the tenant through either an unlawful detainer proceeding, or through a civil action in a court of competent jurisdiction after a hearing;

(c) Reimbursement for damages established pursuant specified requirements; and

(d) Reimbursement for unpaid rent and unpaid utilities, provided that the landlord can evidence it to the department's satisfaction.

Claims related to a tenancy must total at least five hundred dollars in order for a claim to be eligible for reimbursement from the program. While claims or damages may exceed five thousand dollars, total reimbursement from the program may not exceed five thousand dollars per tenancy.

Damages, beyond wear and tear, that are eligible for reimbursement include, but are not limited to: Interior wall gouges and holes; damage to doors and cabinets, including hardware; carpet stains or burns; cracked tiles or hard surfaces; broken windows; damage to household fixtures such as disposal, toilet, sink, sink handle, ceiling fan, and lighting. Other property damages beyond normal wear and tear may also be eligible for reimbursement at the department's discretion.

All reimbursements for eligible claims shall be made on a first-come, first-served basis, to the extent of available funds. The department shall use best efforts to notify the tenant of the amount and the reasons for any reimbursements made.

The Department of Commerce, in its sole discretion, may inspect the property and the landlord's records related to a claim.

A landlord in receipt of reimbursement from the program is prohibited from:

(a) Taking legal action against the tenant for damages attributable to the same tenancy; or

(b) Pursuing collection, or authorizing another entity to pursue collection on the landlord's behalf, of a judgment

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against the tenant for damages attributable to the same tenancy.

A landlord denied reimbursement may seek to obtain a judgment from a court of competent jurisdiction and, if successful, may resubmit a claim for damages.

Effective 6/6/2018, the bill also amends Wash Rev. Code § 36.22.178 to provide that a surcharge of thirteen dollars (formerly, $10) per instrument shall be charged by the county auditor for each document recorded, which will be in addition to any other charge authorized by law.

DEFAULT SERVICING

CASE LAW

FDCPA – Strict liability

☹

CASE NAME: *Gonzalez v. Cullimore*
DATE: *02/26/2018*
CITATION: *Supreme Court of Utah. --- P.3d ----. 2018 WL 1057542*

Tamara Gonzalez, an owner of a condominium unit within Pemberley at Robinson's Grove Condominium Unit Owners Association (Association), allegedly fell behind on paying her Association assessment fees. The Association hired a law firm to collect on the delinquent fees. The firm sent demand letters to Ms. Gonzalez, who upon receipt of the letters, claimed that the letters misrepresented the amount she actually owed. The firm subsequently filed a lawsuit against Ms. Gonzalez. After several years of proceedings, Ms. Gonzalez brought a counterclaim against the law firm, asserting, in addition to other claims, that the law firm had violated § 1692e of the FDCPA by misrepresenting the character, amount, and legal status of the debt she owed in the law firm's demand letters and in its complaint.

The law firm brought a motion for summary judgment on the counterclaims and the trial court granted the motion in part, dismissing Ms. Gonzalez's § 1692e counterclaims, relying on a Utah Court of Appeals decision, *Midland Funding LLC v. Sotolongo*, which held that the FDCPA was not a strict liability statute and that a debt collector may rely on its client's representations of the amount of the debt owed without incurring FDCPA liability.

On appeal, the Court held that the court of appeals erred in the standard it applied to § 1692e claims and accordingly abrogated *Midland Funding*, finding that not only does *Midland Funding* misstate the Ninth Circuit Court of Appeals' standard for § 1692e claims, but the standard set forth in *Midland Funding* clearly contradicts the language of the FDCPA. Additionally, a strict liability interpretation of § 1692e is consistent with § 1692k(c) of the FDCPA which creates an affirmative defense to strict liability for "bona fide errors"—those errors that are unintentional and not preventable by procedures the debt collector should have in place to check the accuracy of representations made to it by clients. Reading a scienter requirement into § 1692e, as *Midland Funding* suggests, would render § 1692k(c) superfluous. Accordingly, the Court held § 1692e claims to a strict liability standard.

Even under a strict liability standard, however, a plaintiff is still required to make a threshold showing that a misrepresentation occurred under the FDCPA. And, because the law firm was the moving party on summary judgment in this case, it bore the initial burden of showing that there was no genuine issue of material fact as to its claims that it made no false representation of the character, amount, or legal status of Ms. Gonzalez's debt. Yet the district court failed to determine whether the law firm had met its initial burden. The Court therefore remanded the case to the district court to make such determination.

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CASE LAW

Escrow interest – Preemption

CASE NAME: *Lusnak v. Bank of America, N.A.*
DATE: *03/02/2018*
CITATION: *United States Court of Appeals, Ninth Circuit. 883 F.3d 118518 Cal. Daily Op. Serv. 2171*

A mortgagor brought putative class action against the mortgagee bank, asserting claims for breach of contract and violation of California's Unfair Competition Law (UCL) stemming from the bank's failure to pay interest on funds in the mortgagor's escrow account.

The district court dismissed the suit on the ground that the NBA preempted California Civil Code § 2954.8(a), which requires financial institutions to pay borrowers at least two percent annual interest on the funds held in the borrowers' escrow accounts. Lusnak appealed.

The appeals court held that California Civil Code § 2954.8(a) was not preempted because it does not prevent or significantly interfere with Bank of America's exercise of its powers.

CASE LAW

Bankruptcy – Value of collateral

CASE NAME: *In re Blackwell*
DATE: *03/05/2018*
CITATION: *United States Bankruptcy Court, S.D. West Virginia, at Charleston. Slip Copy. 2018 WL 1189257*

The Debtors were indebted to Vanderbilt Mortgage and Finance, Inc. pursuant to a Manufactured Home Promissory Note, Security Agreement and Disclosure Statement (the "Loan"), secured by a lien on the Certificate of Title of the home and a deed of trust on the land. The original principal amount of the indebtedness was $57,952.88.

The Blackwells defaulted on the Loan and filed Chapter 13. Their plan valued the Manufactured Home at $5,000.00, and provided for payment of $5,527.20 over the life of the plan. In addition, the plan valued the Real Estate at $6,000, and provided for payment of $6,632.64 over the life of the plan. Vanderbilt filed a Proof of Claim listing the secured indebtedness as $66,780.99 and objected to the plan.

The Blackwells stipulated to Vanderbilt's Land Appraisal that valued the Real Estate at $18,000. Vanderbilt's Appraisal valued the Manufactured Home at $16,800. Debtor's Appraisal valued the Manufactured Home at $5,000.

Vanderbilt's appraiser, Mr. Banks, personally inspected the Manufactured Home. Based on his observations of the Manufactured Home, he used the National Appraisal Services ("NAS") worksheet to arrive at a valuation of $16,800. Banks stated that the Manufactured Home was in a state of disrepair. He noted that there were animals inside the home and a musty smell. In spite of the Manufactured Home requiring a considerable amount of repairs and being in a state of disrepair, Banks concluded that it was in fair condition. Some of the repairs he suggested were to the roof, furnace, underpinning, and walls. Banks also remarked that the floor coverings, missing door, and missing window needed to be replaced. Despite needing extensive repairs, Banks believed the home had physical life of a remaining 28 years.

The Debtors' appraiser, Mr. Linkous, testified that the Manufactured Home was not livable and was a salvage unit valued at no more than $5,000. Linkous personally inspected the home and used the NADA guide. In addition to the repairs that Banks cited, Linkous stated that the subfloor and a soffit needed to be repaired or replaced. He also noted that there was water damage to the ceiling that indicated a roof leak and there was exposed plumbing in the bathroom.

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In addition, Mr. Blackwell also testified that the Manufactured Home did not have heat and that it was being heated by the electric stove. Blackwell also informed the Court that his daughter and grandchild had been removed from the house by Child Protective Services because those governmental officials deemed the home to be uninhabitable.

The Court accepted the of the Real Estate as $18,000. The Court's decision concerning valuation of the Manufactured Home was heavily influenced by several factors including the presence of animals, the water damage, the conditions of the lavatory, the exposed plumbing, and the inoperable furnace. The Manufactured Home would not satisfy even the minimal warranty of habitability as required by § 37–6–30 of the West Virginia Code. Accordingly, the Court found that the value of the home was $5,000.

CASE LAW

Servicer – Debt collector

CASE NAME: *Davidson v. Seterus, Inc.*
DATE: *03/13/2018*
CITATION: *Court of Appeal, Fourth District, Division 1, California. 2018 WL 128187318*

The defendants demurred to Davidson's complaint, arguing that neither of them is a " 'debt collector' " who engages in " 'debt collection' " under the Act. The trial court sustained the defendants' demurrer. The borrower appealed.

According to the appeals court, the Rosenthal Act provides that a debt collector is a person who regularly engages in the act or practice of collecting money, property or their equivalent that is due or owing by a natural person as a result of a transaction between that person and another person, in which the natural person acquired property, services, or money on credit, primarily for personal, family, or household purposes.

The Court noted that the Rosenthal Act is a civil statute that was enacted for the protection of the public, and, to the extent that the statutory language is ambiguous, the statute should be construed broadly in favor of protecting the public. Given this principle, and the fact that the Rosenthal Act's definitional language is sufficiently broad to include mortgage lenders and/or mortgage servicers within its purview, the Court concluded that mortgage lenders and mortgage servicers can be "debt collectors" under the Rosenthal Act.

The Court also found that Davidson's complaint did not allege liability on IBM's part based solely on its status as Seterus's parent corporation. Rather, the complaint asserted that IBM, itself, was actively involved in the alleged illegal conduct. These allegations were sufficient to state a cause of action against IBM for violations of the Rosenthal Act and the UCL.

Reversed.

CASE LAW

Servicing – Debt collection

CASE NAME: *Knight v. Ocwen Loan Servicing, LLC*
DATE: *03/14/2018*
CITATION: *United States District Court, E.D. Michigan, Southern Division. --- F.Supp.3d ----. 2018 WL 1312004*

CASE NAME: *Keyes v. Ocwen Loan Servicing, LLC*
DATE: *03/14/2018*
CITATION: *United States District Court, E.D. Michigan, Southern Division. Slip Copy. 2018 WL 1315804*

In these related cases, Plaintiffs filed suit, alleging claims under the Michigan Collection Practices Act ("MCPA"), Mich. Comp. Laws §§ 445.251 et seq. Defendant moved to dismiss Plaintiffs' claims for negligent and willful violations of the MCPA.

The sole issue for resolution here was whether Ocwen was a "regulated person" under the MCPA.

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In pertinent part, the MCPA defines "regulated person" as:

A person whose collection activities are confined to and are directly related to the operation of a business other than that of a collection agency including any of the following ...

(ii) A state or federally chartered bank that collects its own claim.

(vii) A business that is licensed by this state under a regulatory act that regulates collection activity.

The Court found that, based on its statutory definition, "regulated persons" includes Ocwen.

All parties agreed that Ocwen is a mortgage loan servicer licensed under Michigan laws. Specifically, Ocwen is licensed under the following Michigan state laws: (1) the Mortgage Brokers, Lenders, and Servicers Licensing Act, Mich. Comp. Laws § 445.1651; and (2) the Secondary Mortgage Loan Act, Mich. Comp. Laws § 493.51.

Motions to dismiss denied.

LEGISLATION

Alabama

Ownership - Appeal

2018 AL H 418. Enacted 4/6/2018. Effective immediately.

This bill adds an uncodified section to provide that, notwithstanding Section 40-2A-8, Code of Alabama 1975, any appeal concerning competing ownership claims related solely to who is the proper party to have possession of the motor vehicle or manufactured home and the certificate of title to the motor vehicle or manufactured home shall be filed in circuit court. Court costs incurred by such appeal shall be prepaid by the appealing party. Any claim by an interested party for damages or for other action must be brought as a separate action as provided by law.

LEGISLATION

Florida

Foreclosure - Bankruptcy

2018 FL S 220. Enacted 3/19/2018. Effective 10/1/2018.

This bill adds Fla. Stat. § 702.12, Actions in foreclosure, to provide:

(1)(a) A lienholder, in an action to foreclose a mortgage, may submit any document the defendant filed under penalty of perjury in the defendant's bankruptcy case for use as an admission by the defendant.

(b) A rebuttable presumption that the defendant has waived any defense to the foreclosure is created if a lienholder submits documents filed in the defendant's bankruptcy case which:

1. Evidence the defendant's intention to surrender to the lienholder the property that is the subject of the foreclosure;

2. Have not been withdrawn by the defendant; and

3. Show that a final order has been entered in the defendant's bankruptcy case which discharges the defendant's debts or confirms the defendant's repayment plan that provides for the surrender of the property.

(2) Pursuant to s. 90.203, a court shall take judicial notice of an order entered in a bankruptcy case upon the request of a lienholder.

(3) This section does not preclude the defendant in a foreclosure action from raising a defense based upon the lienholder's action or inaction subsequent to the filing of the document filed in the bankruptcy case which evidenced the defendant's intention to surrender the mortgaged property to the lienholder.

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ADOPTED REGULATION

Florida

Repossession – Taxes

Effective 4/16/2018, this rule amends Fla. Admin. Code Ann. r. 12A-1.012, Repossessed Merchandise and Bad Debts.

The rule provides that the repossession of tangible personal property by the seller or the lienholder is not subject to tax.

The redemption of repossessed tangible personal property by the debtor prior to the sale of the repossessed property is not subject to tax.

The subsequent sale of repossessed tangible personal property is subject to tax.

A dealer who collected and remitted sales tax to the Department on the selling price of tangible personal property sold under a retail installment, title loan, retain title, conditional sale, or similar contract in which the dealer retains a security interest in the property may, upon repossession of the property, take credit on a subsequent tax return for, or obtain a refund of, that portion of the tax that is applicable to the unpaid balance of the contract. The credit or refund is based on the ratio that the total tax bears to the unpaid balance of the sales price, excluding finance or other nontaxable charges. A credit or refund must be claimed within 12 months following the month in which the property was repossessed.

A dealer, who reported and paid the tax imposed by Chapter 212, F.S., on an account later determined to be a bad debt, may take a credit or obtain a refund for any tax paid by him on the unpaid balance due on worthless accounts within 12 months following the month in which the bad debt has been charged off for federal income tax purposes or, if the dealer is not required to file federal income tax returns, within 12 months following the month in which the bad debt has been charged off in accordance with generally accepted accounting principles.

LEGISLATION

Nebraska

Release of mortgage

2017 NE L 750. Enacted 3/21/2018. Effective 7/18/2018 (projected).

This bill amends Neb. Rev. Stat. § 45-737 to provide that a licensee licensed as a mortgage banker shall record or cause to be recorded (formerly, execute and deliver) a release of mortgage pursuant to the provisions of section 76-2803 (formerly, 76-252) or, in the case of a trust deed, record or cause to be recorded (formerly, execute and deliver) a reconveyance pursuant to the provisions of section 76-2803 (formerly, 76-1014.01).

The bill amends Neb. Rev. Stat. § 76-238 to add that the transfer of any debt secured by a mortgage shall also operate as a transfer of the security of such debt.

The bill amends Neb. Rev. Stat. § 76-252 to provide that Section 76-2803 shall govern the mortgagee's obligation to record or cause to be recorded a release of mortgage and the liability of the mortgagee for failure to timely record or cause to be recorded a release of mortgage.

Formerly, this section provided: When the obligation secured by any mortgage has been satisfied, the mortgagee shall, upon receipt of a written request by the mortgagor or the mortgagor's successor in interest or designated representative or by a holder of a junior trust deed or junior mortgage, execute and deliver a release of mortgage in recordable form to the mortgagor or mortgagor's successor in interest or designated representative, as directed in the written request.

Neb. Rev. Stat. § 76-1014.01 has been amended to provide that Section 76-2803 shall govern the

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beneficiary's obligation to record or cause to be recorded a deed of reconveyance and the liability of the beneficiary for failure to timely record or cause to be recorded a deed of reconveyance.

Formerly, this section provided: When the obligation secured by any trust deed has been satisfied, the beneficiary shall, upon receipt of a written request by the trustor or the trustor's successor in interest or designated representative or by the holder of a junior trust deed or junior mortgage, deliver to the trustor or trustor's successor in interest or designated representative a reconveyance in recordable form duly executed by the trustee.

FREQUENTLY ASKED QUESTIONS

Pennsylvania

Mortgage servicing

Mortgage Servicer Frequently Asked Questions, including:

Who needs to be licensed as a mortgage servicer?

A person who engages in the mortgage loan business by directly or indirectly servicing a mortgage loan (master servicer or subservicer), however Section 6111 (a)(b)(1)(ii) specifically excepts a mortgage lender who acts as a servicer for mortgage loans they originated, negotiated and own.

Does a subsidiary of a bank require a mortgage servicer license to service mortgage loans?

No, Section 6112(1) provides the specific language and requirements in which they are excepted.

Does an affiliate of a bank or a subsidiary or affiliate of a credit union require a mortgage servicer license to service mortgage loans?

No, Section 6112(7) provides the specific language and requirements in which they are excepted.

Do I need to be licensed as a mortgage servicer to service business or commercial loans?

No, Section 6111(c) states that the Act does not apply to mortgage loans made for business or commercial purposes.

Do I need to be licensed as a mortgage servicer if I only make or service a few mortgage loans?

Section 6112(3) specifically excepts from the licensing requirements “A person who originates, services or negotiates less than four mortgage loans in a calendar year, unless determined to be engaged in the mortgage loan business by the department.”

Does a licensed “Mortgage Consumer Discount Company” need to apply as a Mortgage Servicer to service the mortgage loans that it has originated and owns?

No, a “Mortgage Consumer Discount Company” is a hybrid license type which consists of a Consumer Discount Company License from the Consumer Discount Company Act and a Mortgage Lender license from the Mortgage Licensing Act. As such, a Mortgage Consumer Discount Company would be included in the licensed activity exceptions noted in Section 6111(b)(1)(ii) which states that “(1) A mortgage lender may: (ii) Act as a mortgage servicer without a separate mortgage servicer license for mortgage loans the mortgage lender has originated, negotiated, and owns.”

As an installment seller licensed under the Consumer Credit Code (12 Pa. C.S. Ch. 62) and registered under Section 6112(13), do I need to be licensed as a mortgage servicer to service manufactured home installment sale contracts which I originated, negotiated and own?

No, refer to Section 6112(13) which provides the specific requirements to qualify for exemption.

As a sales finance company licensed under Consumer Credit Code (12 Pa. C.S. Ch. 62), do I need to be licensed as a mortgage servicer to service manufactured home

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installment sale contracts which I purchased from a licensed installment seller which was registered under Section 6112(13)?

No, the exception language in Section 6112(13) includes "…or holder of installment sales contracts secured by, manufactured homes…" entered into by an installment seller registered under Section 6112(13) of the Mortgage Licensing Act.

Do I need a license if I own master servicing rights, but use a subservicer to perform the servicing duties?

Yes. Both the owner of master servicing rights and the subservicer are required to obtain mortgage servicer licenses.

Do I need a license if I own the loan but not the master servicing rights?

A company which owns a loan but does not service the loan, either as a master servicer or a subservicer, is not required to be licensed as a mortgage servicer. A company which originated and negotiated a mortgage loan, but then sold the loan while retaining servicing rights, either as a master servicer or as a subservicer, is required to be licensed as a mortgage servicer.

I am currently a PA licensed Mortgage Lender. Do I need a servicing license to service my loans?

No, as long as you originated, negotiated and own all the loans you service.

Can a licensed mortgage servicer provide loan modifications without any separate license?

Yes, a licensed mortgage servicer has the authority to service mortgage loans, which includes offering loan modifications. However, the term mortgage loan modifications, does not include any agreement to refinance a mortgage loan into a new mortgage loan.

I am a licensed mortgage lender but I have ceased making new loans. If I surrender my mortgage lender license, do I need a mortgage servicer license to continue to service loans which I made and held when I was licensed as a mortgage lender?

Yes, the authority in Section 6111(b)(1)(ii) for a mortgage lender to service loans which the mortgage lender originated, negotiated and owns is under the heading "Licensed activity exceptions". Once a lender surrenders or otherwise loses its license, it loses the authority under Section 6111(b)(1)(ii) and would need to be licensed as a mortgage servicer in order to continue servicing such mortgage loans.

Are mortgage servicers required to have a licensed mortgage originator?

No, a separate mortgage originator license is not required for the mortgage servicer license.

Are mortgage servicers required to have a Qualifying Individual / Branch Manager at each location?

Yes, each licensed location, including branches, must have a Qualifying Individual / Branch Manager who:

(1) Is a mortgage originator or meets the licensing requirements of a mortgage originator;

(2) Is a management-level officer assigned to the licensed location; and

(3) Lives within 100 miles of the licensed location.

What is the deadline for application without penalty for unlicensed activity?

Any person currently engaging in the mortgage servicing business in Pennsylvania MUST submit an application through NMLS by June 30, 2018.

What happens if I fail to apply by June 30, 2018 but continue to engage in mortgage servicing?

Anyone operating as a mortgage servicer without having applied for licensure by June 30, 2018, or anyone operating as a mortgage servicer after being denied for licensure will be considered unlicensed and subject to the penalties in Section 6140.

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LEGISLATION
South Dakota
Money lending – Attorney's fees

2018 SD H 1094. Enacted 3/5/2018. Effective 7/1/2018.

This bill amends chapter 54-4 (Money Lending Licenses) by adding a new section to read: Notwithstanding Section 15-17-39, any person licensed pursuant to this chapter may recover reasonable attorney's fees in the case of default of payment if provided for in a note, bond, or other evidence of debt.

(Section 15-17-39 provides: Any provision contained in any note, bond, mortgage, or other evidence of debt that provides for payment of attorneys' fees in case of default of payment or foreclosure is against public policy and void, except as authorized by specific statute.)

LEGISLATION
Virginia
Foreclosure - Unlawful detainer

2018 VA H 311. Enacted 3/9/2018. Effective 7/1/2018.

This bill amends Va. Code Ann. § 8.01-126, Summons for unlawful detainer issued by magistrate or clerk or judge of a general district court, to add that if, on the date of a foreclosure sale of a single-family residential dwelling unit, the former owner remains in possession of such dwelling unit, such former owner becomes a tenant at sufferance. Such tenancy may be terminated by a written termination notice from the successor owner given to such tenant at least three days prior to the effective date of termination. Upon the expiration of the three-day period, the successor owner may file an unlawful detainer under this section. Such tenant shall be responsible for payment of fair market rental from the date of such foreclosure until the date the tenant vacates the dwelling unit, as well as damages, and for payment of reasonable attorney fees and court costs.

The bill amends Va. Code Ann. § 8.01-130, Judgment not to bar action of trespass, ejectment, or unlawful detainer, to provide that no judgment in an action brought under the provisions of this article shall bar any action of trespass, ejectment, or unlawful detainer (adding, unlawful detainer) between the same parties, nor shall any such judgment or verdict be conclusive, in any such future action, of the facts therein found.

FINAL RULE
CFPB
Servicing – Bankruptcy

83 Fed. Reg. 10553 (3/12/2018).

12 CFR Part 1026.

The Bureau of Consumer Financial Protection (Bureau) is issuing this final rule amending certain Regulation Z mortgage servicing rules issued in 2016 relating to the timing for servicers to transition to providing modified or unmodified periodic statements and coupon books in connection with a consumer's bankruptcy case.

The Bureau amends 12 CFR part 1026 as follows:

PART 1026—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 2601, 2603-2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 et seq.

Subpart E—Special Rules for Certain Home Mortgage Transactions

2. Amend § 1026.41 by:

a. Revising paragraph (e)(5)(iv)(B); and

b. Removing paragraph (e)(5)(iv)(C).

The revision reads as follows:

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§ 1026.41 Periodic statements for residential mortgage loans.

* * * * *

(e) * * *

(5) * * *

(iv) * * *

(B) Single-statement exemption. As of the date on which one of the events listed in paragraph (e)(5)(iv)(A) of this section occurs, a servicer is exempt from the requirements of this section with respect to the next periodic statement or coupon book that would otherwise be required but thereafter must provide modified or unmodified periodic statements or coupon books that comply with the requirements of this section.

* * * * *

3. Amend Supplement I to Part 1026 as follows:

a. Under Section 1026.41—Periodic Statements for Residential Mortgage Loans:

i. 41(e)(5)(iv)(B) Transitional single-billing-cycle exemption is revised; and

ii. 41(e)(5)(iv)(C) Timing of first modified or unmodified statement or coupon book after transition is removed.

The revision reads as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

Section 1026.41 Periodic Statements for Residential Mortgage Loans

* * * * *

41(e)(5)(iv)(B) Single-Statement Exemption.

1. Timing. The exemption in § 1026.41(e)(5)(iv)(B) applies with respect to a single periodic statement or coupon book following an event listed in § 1026.41(e)(5)(iv)(A). For example, assume that a mortgage loan has a monthly billing cycle, each payment due date is on the first day of the month following its respective billing cycle, and each payment due date has a 15-day courtesy period. In this scenario:

i. If an event listed in § 1026.41(e)(5)(iv)(A) occurs on October 6, before the end of the 15-day courtesy period provided for the October 1 payment due date, and the servicer has not yet provided a periodic statement or coupon book for the billing cycle with a November 1 payment due date, the servicer is exempt from providing a periodic statement or coupon book for that billing cycle. The servicer is required thereafter to resume providing periodic statements or coupon books that comply with the requirements of § 1026.41 by providing a modified or unmodified periodic statement or coupon book for the billing cycle with a December 1 payment due date within a reasonably prompt time after November 1 or the end of the 15-day courtesy period provided for the November 1 payment due date. See § 1026.41(b).

ii. If an event listed in § 1026.41(e)(5)(iv)(A) occurs on October 20, after the end of the 15-day courtesy period provided for the October 1 payment due date, and the servicer timely provided a periodic statement or coupon book for the billing cycle with the November 1 payment due date, the servicer is not required to correct the periodic statement or coupon book already provided and is exempt from providing the next periodic statement or coupon book, which is the one that would otherwise be required for the billing cycle with a December 1 payment due date. The servicer is required thereafter to resume providing periodic statements or coupon books that comply with the requirements of § 1026.41 by providing a modified or unmodified periodic statement or coupon book for the billing cycle with a January 1 payment due date within a reasonably prompt time after December 1 or the end of the 15-day courtesy period provided for the December 1 payment due date. See § 1026.41(b).

2. Duplicate coupon books not required. If a servicer provides a coupon book instead of a periodic statement under § 1026.41(e)(3), § 1026.41 requires the servicer to

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provide a new coupon book after one of the events listed in § 1026.41(e)(5)(iv)(A) occurs only to the extent the servicer has not previously provided the consumer with a coupon book that covers the upcoming billing cycle.

3. Subsequent triggering events. The single-statement exemption in § 1026.41(e)(5)(iv)(B) might apply more than once over the life of a loan. For example, assume the exemption applies beginning on April 14 because the consumer files for bankruptcy on that date and the bankruptcy plan provides that the consumer will surrender the dwelling, such that the mortgage loan becomes subject to the requirements of § 1026.41(f). See § 1026.41(e)(5)(iv)(A)(1). If the consumer later exits bankruptcy on November 2 and has not discharged personal liability for the mortgage loan pursuant to 11 U.S.C. 727, 1141, 1228, or 1328, such that the mortgage loan ceases to be subject to the requirements of § 1026.41(f), the single-statement exemption would apply again beginning on November 2. See § 1026.41(e)(5)(iv)(A)(2).

INSTALLATION

EMERGENCY RULE

Colorado

Fees

Effective 4/15/2018, expiring 5/15/2018, this rule amends 8 Colo. Code Regs. § 1302-7, providing a one-month fee holiday from April 15, 2018, through May 15, 2018, by reducing some Schedule "A" Installation Program Fees to $1.00, including:

Independent Inspector Registration (3-years): usually $450 – now $1.00

Insignia Fees: usually $60 – now $1.00

Red Tag Fee: usually $250 - now $1.00

Rough or Final Installation Inspection Fees: usually $200 - now $1.00

Reinspection Fee for Red Tag Removal: usually $200 - now $1.00.

PROPOSED RULE

Florida

Towing - Length

This rule amends Fla. Admin. Code Ann. r. 14-26.012 to increase permitted total length of towed manufactured homes from 108 to 120 feet.

LENDING

CASE LAW

TILA - Rescission

CASE NAME: *Jesinoski v. Countrywide Home Loans, Inc.*
DATE: *02/28/2018*
CITATION: *United States Court of Appeals, Eighth Circuit. 883 F.3d 1010*

Mortgage loan borrowers Larry and Cheryl Jesinoski received Truth in Lending Act disclosure documents at their loan closing. Admitting that the lender delivered the required notice and material disclosures, but arguing that the lender did not provide the required number of copies, the Jesinoskis sought to rescind their loan on a date just shy of the three-year anniversary of loan execution.

The lender denied rescission, asserting the Jesinoskis had signed an acknowledgment indicating receipt of the required disclosures. The Jesinoskis sued more than three years after closing, alleging TILA violations. The district court dismissed the action as untimely, holding that, even if the three-year limitation period applied, borrowers must file suit and not merely provide notice within the three-year time period. Ultimately, the Supreme Court reversed, holding the three-year limitation period applied to the provision of notice rather than the filing of suit.

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On remand, the district court concluded the signed acknowledgment created a rebuttable presumption that the Jesinoskis had received the required number of copies. The court also concluded the Jesinoskis failed to generate a triable question of fact rebutting the presumption.

On appeal, the Jesinoskis argued that because the acknowledgment does not state, "each acknowledge receipt of two copies each" the acknowledgment shows receipt of only two copies total or, at a minimum, results in ambiguity that must be construed against the lender. The Court viewed this argument as a tortured attempt to create an ambiguity where none existed.

"[t]he undersigned each acknowledge receipt of two copies of NOTICE OF RIGHT TO CANCEL...." unambiguously gave rise to the statutory presumption that the debtors received the proper number of copies. The language of the acknowledgment as presented to and signed individually by Larry and Cheryle more than sufficed to demonstrate clearly each spouse's receipt of two copies.

The Jesinoskis did not claim to remember whether they received a total of two or four copies of the Notice. Rather, they attempted to demonstrate that they received only two copies by establishing that, several years later, their file of closing documents contained only two copies. At that time, the Jesinoskis contacted Mark Heinzman, a mortgage specialist at a firm named Financial Integrity, and the Jesinoskis agreed to bring their file to Heinzman.

According to the Jesinoskis, they were present when Heinzman received and reviewed their file approximately two years and nine months after loan closing. Also according to the Jesinoskis, Heinzman told them they were entitled to rescind their loan because their file did not contain all necessary copies of disclosure documents. Soon after the meeting, the Jesinoskis paid Heinzman $3,000 to draft a rescission notice and send it to the lender.

Relying upon what the parties refer to as a closed-envelope theory, the Jesinoskis asserted a reasonable jury could conclude the lender provided only two copies total at closing because, according to the Jesinoskis, their folder contained only two copies years later when opened.

To prove the contents of the file, however, the Jesinoskis' relied on their recitation of Heinzman's purported description of the closing file. A party may not defeat summary judgment with evidence that will be inadmissible at trial, and the Jesinoskis' representation about what Heinzman described was textbook inadmissible hearsay.

Affirmed.

EMERGENCY RULE

California

Residential Energy Efficiency Loan Assistance Program

Effective 3/05/2018. Expires 6/05/2018.

Cal. Code Regs. tit. 4, §§ 10091.1 to 10091.15, Residential Energy Efficiency Loan Assistance Program.

This rule adds that manufactured and mobile homes are considered Eligible Properties if the mobile or manufactured home is anchored to a permanent, site-built foundation constructed of durable materials (i.e., concrete, mortared masonry, or wood).

"Eligible Property" means a residential property of no more than four (4) units that receives gas and/or electric service from one or more Investor-Owned Utilities, or Community Choice Aggregators. Rented or leased properties are eligible with the owner's written consent to have the Eligible Improvements installed.

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"Eligible Loan" means a loan or retail installment contract made by a Participating Financial Institution or Participating Finance Lender to a Borrower to finance Eligible Improvements on an Eligible Property.

A Participating Financial Institution or Participating Finance Lender may sell an Enrolled Loan or portfolio of Enrolled Loans at its discretion.

LEGISLATION

Indiana

Mortgage lending – Consumer loans

2018 IN H 1397. Enacted 3/13/2018. Effective 7/1/2018.

Among other changes:

Ind. Code § 24-4.5-2-202 has been amended by substituting “consumer” for “buyer.”

The bill adds that, in addition to the credit service charge permitted by this chapter, a seller may contract for and receive any of the following additional charges in connection with a consumer credit sale:

(f) A charge not to exceed twenty-five dollars ($25) for a skip-a-payment service, subject to the following:

(i) At the time of use of the service, the consumer must be given written notice of the amount of the charge and must acknowledge the amount in writing, including by electronic signature.

(ii) A charge for a skip-a-payment service may not be assessed with respect to a consumer credit sale subject to the provisions on rebate upon prepayment that are set forth in section 210 of this chapter.

(iii) A charge for a skip-a-payment service may not be assessed with respect to any payment for which a delinquency charge has been assessed under section 203.5 of this chapter.

(g) A charge not to exceed ten dollars ($10) for an optional expedited payment service, subject to the following:

(i) The charge may be assessed only upon request by the consumer to use the expedited payment service.

(ii) The amount of the charge must be disclosed to the consumer at the time of the consumer's request to use the expedited payment service.

(iii) The consumer must be informed that the consumer retains the option to make a payment by traditional means.

(iv) The charge may not be established in advance, through any agreement with the consumer, as the expected method of payment.

(v) The charge may not be assessed with respect to any payment for which a delinquency charge has been assessed under section 203.5 of this chapter.

(h) A charge for a GAP agreement, subject to specified requirements.

The bill adds Ind. Code § 24-4.5-2-417 to provide that:

(1) This section applies to consumer credit sales, including revolving charge accounts.

(2) Except as provided in subsection (3), a creditor shall credit a payment to a consumer's account as of the date of receipt, except when a delay in crediting does not result in a finance charge or other charge, including a delinquency charge under section 203.5 of this chapter. A delay in posting does not violate this section so long as the payment is credited as of the date of receipt.

(3) If a creditor specifies in writing requirements for the consumer to follow in making payments, but accepts a payment that does not conform to the requirements, the creditor shall credit the payment within five (5) days of receipt of the payment.

(4) If a creditor fails to credit a payment as required by this section in time to avoid the imposition of a finance or other charge, including a delinquency charge, the

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creditor shall adjust the consumer's account so that the charges imposed are credited to the consumer's account during the next payment period.

The bill amends Ind. Code § 24-4.5-3-202 to provide that, in addition to the loan finance charge permitted by this chapter, a lender may contract for and receive the following additional charges in connection with a consumer loan:

(f) A charge not to exceed twenty-five dollars ($25) for each returned payment (formerly, each return) by a bank or other depository institution of a dishonored check, electronic funds transfer, negotiable order of withdrawal, or share draft issued by the debtor (adding, electronic funds transfer).

The bill also adds as permissible charges:

(i) A charge not to exceed twenty-five dollars ($25) for a skip-a-payment service, subject to the following:

(i) At the time of use of the service, the consumer must be given written notice of the amount of the charge and must acknowledge the amount in writing, including by electronic signature.

(ii) A charge for a skip-a-payment service may not be assessed with respect to a consumer loan subject to the provisions on rebate upon prepayment that are set forth in section 210 of this chapter.

(iii) A charge for a skip-a-payment service may not be assessed with respect to any payment for which a delinquency charge has been assessed under section 203.5 of this chapter.

(j) A charge not to exceed ten dollars ($10) for an optional expedited payment service, subject to the following:

(i) The charge may be assessed only upon request by the consumer to use the expedited payment service.

(ii) The amount of the charge must be disclosed to the consumer at the time of the consumer's request to use the expedited payment service.

(iii) The consumer must be informed that the consumer retains the option to make a payment by traditional means.

(iv) The charge may not be established in advance, through any agreement with the consumer, as the expected method of payment.

(v) The charge may not be assessed with respect to any payment for which a delinquency charge has been assessed under section 203.5 of this chapter.

(l) A charge for a GAP agreement, subject to specified requirements.

(m) With respect to consumer loans made by a person exempt from licensing under IC 24-4.5-3-502(1), a charge for a debt cancellation agreement, subject to the following:

(i) A debt cancellation agreement or debt cancellation coverage may not be required by the lender, and that fact must be disclosed in writing to the consumer.

(ii) The charge for the initial term of coverage under the debt cancellation agreement must be disclosed in writing to the consumer. The charge may be disclosed on a unit-cost basis only in the case of revolving loan accounts, closed-end credit transactions if the request for coverage is made by mail or telephone, and closed-end credit transactions if the debt cancellation agreement limits the total amount of indebtedness eligible for coverage.

(iii) If the term of coverage under the debt cancellation agreement is less than the term of the consumer loan, the term of coverage under the debt cancellation agreement must be disclosed in writing to the consumer.

(iv) The consumer must sign or initial an affirmative written request for coverage after receiving all required disclosures.

(v) If debt cancellation coverage for two (2) or more events is provided for in a single charge under a debt cancellation agreement, the entire charge may be excluded from the loan finance charge and imposed as

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an additional charge under this section if at least one (1) of the events is the loss of life, health, or income.

The bill amends Ind. Code § 24-4.5-3-408 to provide that this section applies to consumer loans, including revolving loan accounts.

Except as provided below, a creditor shall credit a payment to a consumer's account as of the date of receipt, except when a delay in crediting does not result in a finance charge or other charge, including a delinquency (formerly, late) charge under section 203.5 of this chapter (adding, under section 203.5 of this chapter). A delay in posting does not violate this section so long as the payment is credited as of the date of receipt.

If a creditor specifies in writing (adding, in writing) requirements for the consumer to follow in making payments, (deleting, of the contract, payment coupon book, payment coupon or statement, or periodic statement) but accepts a payment that does not conform to the requirements, the creditor shall credit the payment within five (5) (formerly, 2) days of receipt of the payment.

Ind. Code § 24-4.5-3-502.1 has been amended to provide that:

(1) A person that is a:

(a) depository institution;

(b) subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or

(c) credit union service organization;

may engage in Indiana in the making of subordinate lien mortgage transactions without obtaining a mortgage license issued by the department (formerly, a license under this article).

(2) A collection agency licensed under IC 25-11-1 or an institution regulated by the Farm Credit Administration may engage in:

(a) taking assignments of subordinate lien mortgage transactions; and

(b) undertaking the direct collection of payments from or the enforcement of rights against debtors arising from subordinate lien mortgage transactions;

in Indiana without obtaining a mortgage license issued by the department (formerly, a license under this article).

(3) A person that is not otherwise exempt under subsection (1) or (2) shall acquire and retain a mortgage license issued by the department in order to regularly engage in Indiana in the following actions with respect to subordinate lien mortgage transactions (formerly, A person that does not qualify under subsection (1) or (2) shall acquire and retain a license relating to subordinate lien mortgage transactions under this chapter in order to regularly engage in Indiana in the following actions with respect to subordinate lien mortgage transactions:

(a) The making of subordinate lien mortgage loans.

(b) Taking assignments of subordinate lien mortgage loans.

(c) Undertaking the direct collection of payments from or the enforcement of rights against debtors arising from subordinate lien mortgage loans.

(4) Each:

(a) creditor licensed by the department to engage in subordinate lien mortgage transactions; and

(b) entity that is exempt (either under this article or under IC 24-4.4-1-202(b)(6)(a)) from licensing and that:

(i) employs a licensed mortgage loan originator; or

(ii) sponsors under an exclusive written agreement, as permitted by IC 24-4.4-1-202(b)(6)(a), a licensed mortgage loan originator as an independent agent;

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shall register with and maintain a valid unique identifier issued by the NMLSR. Each licensed mortgage loan originator must be employed by, or sponsored under an exclusive written agreement (as permitted by IC 24-4.4-1-202(b)(6)(a)) and as an independent agent, and associated with, a licensed creditor (formerly, a creditor licensed under this chapter to engage in subordinate lien mortgage transactions) (or an exempt entity described under subdivision (b)) that is registered with the NMLSR in order to originate loans.

(5) Applicants for a mortgage license (formerly, a license to engage in subordinate lien mortgage transactions) must apply to the department for a the license in a form prescribed by the director.

The bill amends Ind. Code § 24-4.5-3-505 to provide that every creditor required to be licensed under this article shall maintain records in conformity with United States generally accepted accounting principles and practices, or in any other form that may be preapproved at the discretion of the director,

ADOPTED REGULATION

Texas

Home equity loans

Effective 3/29/2018, the rule amends 7 Tex. Admin. Code §§ 153.1, 153.5, 153.14, 153.17, 153.84, and 153.86; adopts the repeal of §153.87 and adopts new §153.45.

The main purpose of the adoption is to implement SJR 60, passed by the Texas Legislature in 2017. SJR 60 amends Section 50 and applies to home equity loans entered on or after January 1, 2018.

SJR 60's constitutional amendments relate primarily to six issues. First, SJR 60 amends Section 50(a)(6)(E) by replacing the current three percent fee limitation with a two percent limitation, and specifying that four types of fees are not included in the limitation: an appraisal fee, a property survey fee, a mortgagee title insurance premium, and a title report fee. Second, SJR 60 amends Section 50(a)(6)(I) by removing the current prohibition on a home equity loan for agricultural property. Third, SJR 60 amends Section 50(a)(6)(P) by adding certain subsidiaries of depository institutions to the list of lenders authorized to make home equity loans, and replacing a reference to a "mortgage broker" with "mortgage banker or mortgage company." Fourth, SJR 60 amends Section 50(f) by allowing a home equity loan to be refinanced as a non-home-equity loan if four conditions are met: a one-year timing limitation, a limitation on advance of additional funds, an 80% loan-to-value limitation, and a required disclosure to the property owner. Fifth, SJR 60 amends Section 50(g) to make conforming changes to the required 12-day consumer disclosure. Sixth, SJR 60 amends Section 50(t)(6) by removing the 50% limitation on additional debits or advances for a home equity line of credit.

ADOPTED REGULATION

Texas

Consumer loans – Administrative fees

Effective 3/8/2018, this rule amends 7 Tex. Admin. Code § 83.503, concerning Regulated Lenders and Credit Access Businesses, to specify that in a consumer loan under Texas Finance Code, Chapter 342, Subchapter E, the administrative fee may be included in the cash advance or principal balance on which interest is computed.

ADOPTED REGULATION

Texas

Plain language contract provisions

Effective 3/8/2018, this rule amends 7 Tex. Admin. Code § 90.203 concerning Chapter 342, Plain Language Contract Provisions.

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In general, the purpose of the rule amendments is to specify that in a consumer loan under Texas Finance Code, Chapter 342, Subchapter E, the administrative fee may be included in the cash advance or principal balance on which interest is computed.

Amendments to §90.203(b)(7) add model plain language clauses to be used in transactions where the lender finances the administrative fee. Lenders that do not finance the administrative fee will be able to continue using the current model clauses in §90.203(b)(7). The amendments specify that the current model clauses should be used when the administrative fee is paid in cash or is not included in the cash advance on which interest is computed. The current model clauses are amended to include updated rate bracket amounts under Texas Finance Code, §342.201. The amendments also add new clauses to be used when the administrative fee is financed. Each of the new clauses includes a statement of the amount of the cash advance, in order to ensure that the contract discloses the specific amount on which interest will be computed.

Current figures in §90.203(b)(7)(A), (b)(7)(C), and (b)(7)(E), have been amended and renumbered as (b)(7)(A)(i), (b)(7)(C)(i), and (b)(7)(E)(i). New figures have been added at §90.203(b)(7)(A)(ii), (b)(7)(C)(ii), and (b)(7)(E)(ii), for use when the administrative fee is financed.

ADOPTED REGULATION

Vermont

Privacy

Issued 3/15/2018.

Regulation B-2018-01, PRIVACY OF CONSUMER FINANCIAL AND HEALTH INFORMATION REGULATION.

(This Regulation replaces Regulation B-2015-02)

The regulation governs the treatment of nonpublic personal information about consumers by financial institutions, including:

(1) financial institutions within the meaning of 8 V.S.A. § 10202 (5);

(2) any person required to be licensed or registered with the commissioner under Part 2 of title 8 V.S.A.;

(3) lenders, mortgage brokers, sales finance companies, and mortgage loan originators subject to chapter 73 of title 8 V.S.A.;

(4) independent trust companies subject to chapter 77 of title 8 V.S.A.;

(5) money services providers under chapter 79 of title 8 V.S.A.;

(6) debt adjusters under chapter 83 of title 8 V.S.A.;

(7) loan servicers under chapter 85 of title 8 V.S.A.;

(8) branches and agencies of foreign banks; and,

(9) any subsidiaries of such entities; provided, however, that this regulation does not apply to any subsidiary that is subject to a privacy law or rule implementing Title 15 U.S.C. § 6801 et seq. and is not a financial institution within the meaning of 8 V.S.A. § 10202 (5).

The regulation:

(1) Requires a financial institution to provide notice to individuals about its privacy policies and practices;

(2) Describes the conditions under which a financial institution may disclose nonpublic personal information about consumers to nonaffiliated third parties;

(3) Requires financial institutions to obtain consumer consent prior to disclosing that information, subject to the exceptions in Sections 14, 15, 16 and 17 of this regulation and 8 V.S.A. § 10204 and subject to the federal Fair Credit Reporting Act and Vermont Fair Credit Reporting Act; and

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(4) Provides an exemption from the provisions of 8 V.S.A. §§ 10201 et seq. for information about business customers.

LICENSING

LEGISLATION
Arizona
Dealers - Exemptions

2018 AZ H 2150. Enacted 3/16/2018. Effective 7/21/2018 (projected).

This bill amends Ariz. Rev. Stat. Ann. § 41-4028, Exemptions, to add subsection (d) and provide that:

The requirements of this chapter (relating to a manufacturer, dealer, broker, salesperson or installer license) applicable to dealers do not apply to persons performing the following transactions:

1. A person who is licensed pursuant to title 32, chapter 20 (formerly, real estate brokers and real estate salesmen licensed under section 32-2122) and who is engaged in activities proscribed by this chapter with respect to any of the following:

(a) New or used (adding, new or) manufactured homes, mobile homes or factory-built buildings if the manufactured home, mobile home or factory-built building is listed in a contract for transfer of an interest in real property executed by its owner and is installed on the real property.

(b) New or used manufactured homes and mobile homes that are located in mobile home parks as defined in section 33-1409 if the person who is licensed pursuant to title 32, chapter 20 is acting as an agent for a licensed manufactured housing dealer and the dealer is responsible for filing all of the required paperwork and submitting the required fees on the sale of the home pursuant to this chapter.

(c) Used manufactured homes and mobile homes that are located in mobile home parks as defined in section 33-1409 if the person who is licensed pursuant to title 32, chapter 20 is acting on behalf of a private party and the real estate broker or real estate salesman remains subject to the real estate licensure requirements prescribed in title 32, chapter 20.

(d) New manufactured homes if the person who is licensed pursuant to title 32, chapter 20 is acting as an agent for a licensed manufactured housing dealer and the dealer is responsible for filing all of the required paperwork and submitting the required fees on the sale of the home pursuant to this chapter.

LEGISLATION
Arizona
Manufacturers/Dealers - Bonds

2018 AL S 293. Enacted 3/26/2018. Effective immediately.

This bill amends Ala. Code § 32-6-212 to delete the requirement that a manufacturer or dealer of mobile homes obtain a bond "in a sum to be determined by the department, but in no event less than $5,000.00," or, in lieu of a bond, "file a condensed balance sheet as of a date not more than three months prior to July 1 each year in a form prescribed by the department and sworn to by such manufacturer or dealer, evidencing a net worth of not less than $25,000.00."

The bill also deletes: Such manufacturer or dealer may perform its duties under this division either personally or through any of its officers or employees. Temporary license tags issued by any such manufacturer or dealer or by designated agents in connection with mobile homes, trailer coaches, travel trailers, and house trailers shall be of a color or design distinctive from the temporary license tags issued for other type motor vehicles.

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The bill adds that, if approved by the department, such manufacturer or dealer shall enter into a bond with a corporate surety authorized to do business in this state as surety thereon, payable to the State of Alabama in a sum as provided for in Section 40-12-398, Code of Alabama 1975. Provided that a manufacturer or dealer who has entered into a bond pursuant to Section 32-8-34, 32-20-22, or 40-12-398, Code of Alabama 1975, shall not be required to obtain another bond pursuant to this section. Such manufacturer or dealer may perform its duties under this division either personally or through any of its officers or employees. "

Section 40-12-398 provides that: Before any license shall be issued to a new motor vehicle dealer, used motor vehicle dealer, motor vehicle rebuilder, or motor vehicle wholesaler, the applicant shall deliver to the commissioner a good and sufficient surety bond, executed by the applicant as principal and by a corporate surety company qualified to do business in the state as surety, in the sum of twenty-five thousand dollars ($25,000).

§ 32-8-34 relates to Designated agents of the Department of Public Safety.

§ 32-20-22 relates to Designated agents of the Department (with respect to the Manufactured Home Certificate of Title Act)).

LEGISLATION

Indiana

Dealers

2018 IN H 1063. Enacted 3/19/2018. Effective 7/1/2018.

This bill deletes the definition of “dealer” in Ind. Code § 9-13-2-42.

Dealer is now defined in new Ind. Code § 9-32-2-9.6, which provides that:

(a) "Dealer" means, except as otherwise provided in this section, a person that:

(1) sells;

(2) offers to sell; or

(3) advertises for sale;

including directly by the Internet or another computer network, at least twelve (12) motor vehicles within a twelve (12) month period. The term includes a person that sells off-road vehicles, snowmobiles, mini-trucks, or manufactured homes. A dealer must have an established place of business that meets the minimum standards prescribed by the secretary of state under rules adopted under IC 4-22-2.

(b) The term does not include the following:

(1) A receiver, trustee, or other person appointed by or acting under the judgment or order of a court.

(2) A public officer while performing official duties.

(3) A person that holds a mechanic's lien on a motor vehicle under IC 9-22-6, if the person sells the motor vehicle:

(A) in accordance with requirements in IC 9-22-6; or

(B) to an automotive salvage recycler licensed under IC 9-32-9 after the motor vehicle fails to sell at a public auction conducted in compliance with IC 9-22-6.

(4) A person that holds a lien for towing services under IC 9-22-1, if the person complies with all applicable requirements in IC 9-22-1 and IC 9-22-6.

(c) "Dealer", for purposes of IC 9-31, means a person that sells, offers to sell, or advertises for sale at least six (6):

(1) watercraft; or

(2) trailers:

(A) designed and used exclusively for the transportation of watercraft; and

(B) sold in general association with the sale of watercraft;

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within a twelve (12) month period.

(d) "Dealer", unless otherwise provided, refers to all persons required to be licensed by the secretary of state under this article, and before July 1, 2015, a wholesale dealer.

The bill amends Ind. Code § 9-32-2-19 to provide that "Record" includes, but is not limited to, the following:

(8) Flood damage affidavits required under IC 9-32-9-13.

(9) Title affidavits required under IC 9-32-4-1.

(10) Interim plates generated in error.

(11) Copies of rebuilt vehicle disclosures required under IC 9-32-13-6.

Ind. Code § 9-32-4-1 has been amended to provide that a dealer shall make payment to a third party to satisfy any obligation secured by the motor vehicle or watercraft sold by or traded to the dealer not later than ten (10) days after the motor vehicle or watercraft is delivered to or sold by the dealer (formerly, within ten days after the date of sale).

The bill amends the form of the required affidavit in Ind. Code § 9-32-4-2 to read, in part:

(2) That I cannot deliver or transmit a valid certificate of title to the retail purchaser of the motor vehicle or watercraft described in paragraph (3) at the time of sale of the motor vehicle or watercraft to the retail purchaser. The identity of the previous seller or transferor is _____. There ( ) is ( ) is not a lien on the motor vehicle or watercraft. I am required to satisfy any obligation secured by this motor vehicle or watercraft not later than (formerly, Payoff of lien was made on)(date)_____. I expect to deliver or transmit a valid and transferable certificate of title not later than (date)_____ from the State of (state)_____ to the purchaser.

The bill also adds Ind. Code § 9-32-11-21 to provide that:

(a) Except as provided in subsection (b), a dealer that sells a motor vehicle or watercraft must maintain a record of the sale.

(b) The following records, if applicable to the sale, must be maintained:

(1) Finance agreement.

(2) Sales receipt from auction.

(3) Title affidavit required by IC 9-32-4-1.

(4) Interim plates generated in error.

(5) Copy of rebuilt vehicle disclosure required by IC 9-32-13-6.

The bill amends Ind. Code § 9-32-16-11 to provide that all dealers must be in good standing with the bureau, the department of state revenue, the department of financial institutions, and the state police department during the entire period for which a license is valid (adding the department of financial institutions).

LEGISLATION

Virginia

Dealers - Injunctions

2018 VA H 1178. Enacted 3/29/2018. Effective 7/1/2018.

Amends Va. Code Ann. § 46.2-1508, relating to motor vehicle dealers; injunctive relief for failure to obtain a license.

The Motor Vehicle Dealer Board may file a motion with the circuit court for the county or city in which a person is engaged in business in the Commonwealth as a motor vehicle dealer or salesperson, a manufacturer, factory branch, distributor, distributor branch, or factory or distributor representative without first obtaining a license, or a person licensed as a manufactured home dealer or a watercraft dealer without obtaining a certificate of dealer registration as provided in this

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chapter is located, or with the circuit court for the City of Richmond, and, upon a hearing and for cause shown, the court may grant an injunction restraining such person, regardless of whether an adequate remedy at law exists. A single act in violation of the provisions of subsection A is sufficient basis to authorize the issuance of an injunction. The Board shall not be required to post an injunction bond or other security.

Any licensed motor vehicle dealer who sustains injury or damage to his business or property by reason of a violation of subsection A by any person that is not licensed as required by subsection A may file a motion with the circuit court for the county or city in which a person alleged to have committed such violation is located, and, upon a hearing and for cause shown, the court may grant a temporary or permanent injunction prohibiting any further such violation. A single act in violation of the provisions of subsection A shall be sufficient basis to show injury or damage to the business or property of the licensed motor vehicle dealer. A licensed motor vehicle dealer shall not be required to post an injunction bond or other security.

If the Board, pursuant to subsection B, or a licensed motor vehicle dealer, pursuant to subsection C, is awarded an injunction, the court may also award reasonable attorney fees and costs.

MANUFACTURING

EMERGENCY RULE

Colorado

Fees

Effective 4/15/2018, expiring 5/15/2018, this rule amends 8 Colo. Code Regs. § 1302-4, providing a one-month fee holiday from April 15, 2018, through May 15, 2018, by reducing all Product Inspection service fees to $1.00, including:

Plant Certification/Revalidation Inspection, usually $ 260/day/person plus actual expense of travel, per diem, and lodging - now 1.00 total, regardless of additional expenses.

Routine Floor Inspection - usually $35 per floor - now $1.00 per floor.

Reinspection for Red Tag Removal -usually $100 per deviation - now $1.00 per deviation.

Increased Frequency (200%) or Revalidation Inspections - usually $50 per non-compliance and $50 per system of control - now $1.00 per non-compliance and $1.00 per system of control.

Plant Certification/Revalidation - usually $260 per day per person plus actual travel, per diem, and lodging – now $1.00 total, regardless of additional expenses.

SALES

CASE LAW

Fraud – Seller's agent

CASE NAME: *Jett v. Zeman Homes, Inc.*
DATE: *03/19/2018*
CITATION: *Appellate Court of Illinois, First District, FIRST DIVISION. Not Reported in N.E.3d 2018 IL App (1st) 170690-U. 2018 WL 1440418*

Prior to her purchase of a mobile home owned by Zeman Homes, Inc., located in the Alpine Village mobile home park, plaintiff performed three walk-throughs of the home with defendant's agent, Lynette Richey. Plaintiff noticed a large spot in the laundry room. Richey did not deny the spot was mold. Plaintiff also noticed a strange odor. Plaintiff hired a home inspector who informed the plaintiff the black spot in the laundry room was mold and performed some remediation. Despite what she saw and smelled, plaintiff purchased the home. After the purchase, plaintiff made numerous complaints to the property management company, but it was

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unresponsive. Plaintiff ceased paying the lot rent, which led to her eviction.

A common law fraud count alleged that Richey, defendant's agent, made false statements of material fact: (1) "the mobile home had just come on the market," and (2) "that the mold found on one spot behind a table was probably the only mold in the mobile." In the consumer fraud count, plaintiff alleged defendant: (1) failed to disclose to plaintiff the history of the home; (2) failed to disclose the fact that the home had mold in more places; (3) failed to disclose the lot on which the home sat was prone to flooding; and (4) failed to disclose the mobile home was not installed on a concrete foundation and therefore was in contact directly with water when the site flooded. The negligence count alleged defendant breached a duty to plaintiff based on the Mobile Home Landlord and Tenant Rights Act, 765 ILCS 745/21, by (1) showing and selling to plaintiff a home with a history of mold infestation when they already knew plaintiff was sick, (2) failing to alleviate the conditions which created the hazardous condition when notified by plaintiff, and (3) failing to alleviate the hazardous condition when notified by plaintiff when the EPA came and removed half of her possessions.

Defendant's agent, Lynette Richey, died and was never deposed and plaintiff never took the deposition of any other agent of defendant. Plaintiff acknowledged that statements about the house and property came only from Richey. The circuit court found that since Richey was deceased and plaintiff had not pointed to any other agent of defendant having knowledge of the statements made by Richey, plaintiff was incompetent to testify as to those statements. Since those statements represented the basis of plaintiff's claims, the circuit court entered summary judgment in favor of defendant. Plaintiff appealed.

The appeals court agreed that the only agent plaintiff dealt with during the transaction was Richey. Plaintiff's possible interactions with other agents of the defendant after the purchase had no bearing on whether fraud was committed prior to the signing of the contract. Accordingly, the circuit court did not err in granting summary judgment on the fraud counts.

In her negligence claim plaintiff relied on section 21 of the Mobile Home Landlord and Tenant Rights Act. Section 21 deals with a "park owner" who "fails to substantially conform to the lease agreement or fails to substantially comply with any code, statute, ordinance or regulation governing the operation of a mobile home park or the maintenance of the premises."

The lease agreement demonstrated that Alpine Village Manufactured Home Community was the owner/lessor. Since defendant was not the owner/lessor, the negligence claim failed.

Affirmed.

PRESENTATION

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Lease with option to purchase

On April 24, at the MHI Expo, Marc Lifset and Jeff Barringer will give a presentation on the New York Attorney General's investigation into Lease with Option to Purchase Transactions.

ADOPTED REGULATION

Rhode Island

Smoke and carbon dioxide detectors

Rules adopted 3/18/2018.

Rhode Island Fire Safety Code Section 8 of the Rhode Island Life Safety Code (450 R.I. Code R. § 00-00-8)

8.1.24 CHAPTER 24 -ONE-AND TWO-FAMILY DWELLINGS

(Add) 24.6.2 Installation of Smoke and Carbon Monoxide Alarms-New and converted buildings.

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(Add) 24.6.2.1

All buildings hereinafter constructed or converted for residential occupancy, including mobile and modular homes, shall be provided with smoke and carbon monoxide detectors, installed in accordance with NFPA 72, 2010 edition, and NFPA 720, 2012 edition, at the direction and to the satisfaction of the Authority Having Jurisdiction ("AHJ").

(Add) 24.6.2 Installation of Smoke and Carbon Monoxide Alarms-New and converted buildings.

(Add) 24.6.2.1

All buildings hereinafter constructed or converted for residential occupancy, including mobile and modular homes, shall be provided with smoke and carbon monoxide detectors, installed in accordance with NFPA 72, 2010 edition, and NFPA 720, 2012 edition, at the direction and to the satisfaction of the AHJ.

The payment of the reasonable costs, outlined in 24.2.1.5.1, shall not exempt the owner from the payment of fines for violation of this Code as outlined in R.I. Gen. Laws § 23-28.3 9.

(Add) 24.6.3 Installation of Smoke and Carbon Monoxide Alarms-Existing Buildings

(Add) 24.6.3.1

All occupied residential properties, including mobile homes, shall, at the responsibility of the seller before title to the property is transferred, be provided with smoke and carbon monoxide detectors, installed in accordance with NFPA 72, 2010 edition, and NFPA 720, 2012 edition, at the direction and to the satisfaction of the AHJ.

(Add) 24.6.3.1.1

The above smoke and carbon monoxide detectors may be installed as either separate or combination units approved by the AHJ.

(Add) 24.6.3.1.2

The above smoke and carbon monoxide detectors may be either battery operated, hardwired or low power radio units approved by the AHJ. Plug-in type carbon monoxide detectors shall not be acceptable.

(Add) 24.6.3.1.3

The local fire authorities shall enforce the provisions of this chapter. The State Fire Marshal's Office may enforce the provisions of this chapter when so requested to by the local authority or when the local authority is either unwilling or unable to fulfill its obligations under this chapter.

(Add) 24.6.3.1.3.1

The local fire authority that performs smoke and carbon monoxide detector inspections in all residential occupancies shall, at the time of the inspection, be allowed to charge a thirty dollar ($30.00) fee for the inspection of any residential occupancy. The responsibility of this charged fee will be borne by the seller on each occurrence before title to the property is transferred. A sixty dollar ($60.00) fee will be allowed for any subsequent re-inspection of the same residential occupancy due to improper installation, wrong location, improper wiring method, or the seller's failure to maintain a mutually agreed upon appointment with the local fire authority that performs the inspection function. The fees collected by the local fire authority shall be used for fire prevention purposes in that particular city, town, fire district, or other municipal subdivision.

(Add) 24.6.3.1.4

At the time of the transfer of title, the seller must provide the purchaser with a certificate from the fire department for the community in which the dwelling is located stating that the smoke and carbon monoxide detector systems have been inspected within one hundred twenty (120) days prior to the date of sale and has been determined to be in good working order. The fire department for the community in which the dwelling is located must inspect the smoke and carbon monoxide detector systems of the dwelling within ten days of a

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request from the owner. The inspection may be conducted by qualified personnel of the department or the State Fire Marshal's Office. Neither the fire department nor the State Fire Marshal shall be liable for any damage caused by the subsequent malfunction of a smoke detection system or carbon monoxide detector system which it inspected.

LEGISLATION

West Virginia

Disclaimer of warranties

2018 WV H 2464. Enacted 3/27/2018. Effective 6/7/2018.

This bill amends W.Va. Code § 46A-6-107, Disclaimer of warranties and remedies prohibited, to provide that:

(a) Except as otherwise provided in subsection (b) of this section, with respect to goods which are the subject of or are intended to become the subject of a consumer transaction, no merchant may:

(1) Exclude, modify, or otherwise attempt to limit any warranty, express, or implied, including the warranties of merchantability and fitness for a particular purpose; or

(2) Exclude, modify or attempt to limit any remedy provided by law, including the measure of damages available, for a breach of warranty, express, or implied.

(b) A consumer who purchases a used manufactured home may waive the warranties of merchantability and fitness for a particular purpose, or waive a warranty as to a particular defect or malfunction which the merchant has identified and disclosed in writing to the consumer, if the used manufactured home is not being sold for human habitation: Provided, That notice be posted on the front door of the used manufactured home that it is not being sold for human habitation: Provided, however, That the waiver is not effective unless the waiver:

(1) Is in writing;

(2) Is conspicuous and is in plain language;

(3) Identifies with particularity the disclosed defect or malfunction, if any, in the used manufactured home for which the warranty is to be waived;

(4) Describes any additional defects or malfunctions, if any, disclosed to the merchant by a previous owner of the used manufactured home or discoverable by the merchant after an inspection of the used manufactured home;

(5) States that the warranty being waived applies only to the disclosed defect or malfunction, if any, to the extent the merchant intends to waive a warranty as to a specific defect;

(6) Acknowledges that the used manufactured home will not be used for human habitation: Provided, That the consumer shall sign or initial such provision in order to evidence the consumer's acknowledgment thereof; and

(7) Is signed by both the consumer and the merchant before the sales contract is executed.

For purposes of this subsection, "used manufactured home" means a manufactured home, as defined in §21-9-2 of this code, that is more than four years old from its date of production and has previously been occupied, used, or sold for purposes other than resale.

TAXES

LEGISLATION

South Dakota

Mobile homes

2018 SD H 1147. Enacted 3/5/2018. Effective 7/1/2018.

This bill amends S. D. Codified Laws § 10-22-1 to provide that, between the first and fifteenth day of November in each year, the treasurer shall prepare and mail or transmit electronically a statement to each person owing mobile home taxes or taxes on a building on a leased site which are delinquent, except any person on the uncollectible mobile home tax list (deleting, or owing by

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persons known to the treasurer to be dead). The statement shall show the amount of the delinquent mobile home taxes or delinquent taxes on a building on a leased site computed to the date of the statement and shall notify the person owing the delinquent taxes that unless the delinquent taxes are paid in full before December first (formerly, the thirtieth day of November), a penalty of five dollars (formerly, one dollar) shall be added each year to the delinquent taxes and a notice published of the delinquent taxes. The notice shall be published in the official newspapers of the county during the week preceding the third Monday in December.

The bill amends S. D. Codified Laws § 10-22-8 to provide that the treasurer may issue a distress warrant against any person whose mobile home taxes or taxes on a building on a leased site (adding, or taxes on a building on a leased site) are delinquent at any time. The treasurer shall issue a distress warrant against any person whose mobile home taxes or taxes on a building on a leased site (adding, or taxes on a building on a leased site) are delinquent when requested by any county commissioner or sheriff of the county.

The bill amends S.D. Codified Laws § 10-22-15 to provide that, in making the seizure of property, the sheriff shall first seize property that is not encumbered by any lien of record. The sheriff may seize encumbered property if, after due diligence, the sheriff is unable to collect the taxes due from unencumbered property. Any unpaid mobile home taxes or taxes on a building on a leased site shall be a first lien on the mobile home or building on a leased site. This tax lien has a priority over any other lien including a lien that was attached before the tax lien. Nothing provided in this section prevents the sheriff from first seizing an encumbered mobile home or building on a leased site for which the delinquent taxes are based.

Formerly, this section provided: In making the seizure of property, the sheriff shall first seize such property as is not encumbered by any lien of record but nothing herein contained shall prevent the sheriff from seizing any property for the tax based on that specific property, nor from seizing sufficient encumbered property to exact the proportion of the whole tax to be collected, which the value of such encumbered property bears to all of the available property subject to the distress warrant, nor shall anything herein contained prevent the sheriff from resorting to encumbered property for collection of all of said tax, if the same is otherwise liable, and if the sheriff is unable, after due diligence.

The bill amends S.D. Codified Laws § 10-22-30 to add that the treasurer does not need to make an additional effort to collect any mobile home taxes or taxes on a building on a leased site declared to be uncollectible until it is determined either by the board of county commissioners or the treasurer that the tax has become or may become collectible.

The bill repeals S.D. codified Laws § 10-22-31, which provided that, on the first Tuesday in January of each year the county treasurer shall present to the board of county commissioners a list of all mobile home taxes unpaid at the close of business on December thirty-first of the preceding year which became delinquent during the preceding year. Such list shall show the taxing district in which such taxes were assessed, the address of the taxpayer, opposite which shall be a blank space for notation of payment of the tax when the same is paid. The county auditor shall note on such list the payment of any tax listed thereon when collected.

The bill also repeals S.D. Codified Laws § 10-22-32, which provided that, at their meeting during the month of July following, and every three months thereafter until all such taxes are paid or declared uncollectible, the board of county commissioners shall examine the unpaid items on the list described in Section 10-22-31 and by resolution declare uncollectible any such taxes as in their judgment cannot be collected. The county auditor shall furnish the county treasurer certified copies of such resolutions in which shall be listed the name of the person against whose mobile home the tax was assessed, the taxing district in which assessed, the amount of tax and year for which assessed. The county treasurer shall

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make appropriate entry on his duplicate tax list that such taxes have been transferred to a special record in his office to be known as the uncollectible mobile home tax list. The county treasurer need make no further effort to collect mobile home taxes declared to be uncollectible until it is determined either by the board of county commissioners or the county treasurer that such taxes have become or may have become collectible.

S.D. Codified Laws § 10-22-62 has been amended to provide that the provisions of this chapter apply to the collection of the taxes and interest owed on a mobile home, a building on a leased site, and any improvement (formerly, on improvements) added to the tax roll pursuant to Sections 10-6-36.1 to 10-6-36.3, inclusive, and Sections 10-21-31 and 10-21-32.

TITLING AND PERFECTION

LEGISLATION
Indiana
Electronic titles

2018 IN H 1095. Enacted 3/8/2018. Effective 7/1/2018.

This bill amends Ind. Code § 9-14-12-2 to provide a certificate of title may be possessed either in printed form or electronic form.

The bill amends Ind. Code § 9-17-2-14.5 to provide that, if a certificate of title is maintained electronically by the bureau, the bureau is not required to physically deliver the certificate of title but shall provide electronic notification:

(1) to the person who owns the vehicle for which the certificate of title was issued, if no lien or encumbrance appears on the certificate of title; or

(2) if a lien or an encumbrance appears on the certificate of title, to the person that holds the lien or an encumbrance as set forth in the application for the certificate of title.

The bill adds Ind. Code § 9-17-3-0.6 to provide that, as used in this chapter, "transferring party" means a person that:

(1) is listed on the certificate of title as the owner of the vehicle; or

(2) is acting as an agent of the owner and holds power of attorney for the owner of the vehicle.

The bill amends Ind. Code § 17-3-3.4 to provide that:

If a vehicle for which a certificate of title has been issued is sold or if the ownership of the vehicle is transferred in any manner other than by a transfer on death conveyance under section 9 of this chapter, transferring party (formerly, the person who holds the certificate of title) must do the following:

(1) Endorse the certificate of title by assigning the certificate of title (formerly, Endorse on the certificate of title an assignment of the certificate of title) with warranty of title, in a form approved by the bureau (formerly, form printed on the certificate of title), with a statement describing all liens or encumbrances on the vehicle.

(2) Deliver or transmit (adding, or transmit) the certificate of title to the purchaser or transferee at the time of the sale or delivery to the purchaser or transferee of the vehicle, if the purchaser or transferee has made all agreed upon initial payments for the vehicle, including delivery of a trade-in vehicle without hidden or undisclosed statutory liens.

Ind. Code § 9-17-5-1 has been amended to provide that:

(a) Except as provided in subsection (b), a person having physical possession of a certificate of title for a vehicle because the person has a lien or an encumbrance on the vehicle must:

(1) note the discharge on the certificate of title over the signature of the holder of the lien or encumbrance; and

(2) deliver not more than ten (10) business days after receipt of the final payment for the satisfaction or

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discharge of the lien or encumbrance indicated upon the certificate of title to the person that:

(A) is listed on the certificate of title as owner of the vehicle; or

(B) is acting as an agent of the owner and that holds power of attorney for the owner of the vehicle.

(b) A person having a lien or encumbrance on a vehicle for which the certificate of title is electronically recorded shall electronically release the lien or encumbrance not more than ten (10) days after the receipt of the final payment for the satisfaction or discharge of the lien or encumbrance. The electronic lien or encumbrance release referenced in this subsection constitutes notice to the bureau that the lien or encumbrance has been satisfied or discharged.

(c) A person having a lien or encumbrance on a vehicle for which the certificate of title is electronically recorded shall notify the person:

(1) who is listed on the certificate of title as owner of the vehicle; or

(2) who:

(A) is acting as an agent of the owner; and

(B) holds power of attorney for the owner of the vehicle;

of the release of the lien or encumbrance not more than ten (10) business days after receipt of the final payment for the satisfaction or discharge of the lien or encumbrance.

(d) A notice under subsection (c) must include:

(1) the date the satisfaction or discharge of the lien or encumbrance occurred; and

(2) the name and address of the person:

(A) who is listed on the certificate of title as owner of the vehicle; or

(B) who:

(i) is acting as an agent of the owner; and

(ii) holds power of attorney for the owner of the vehicle.

(e) When the bureau receives notice under subsection (b), the bureau shall remove the record of the lien or encumbrance from the certificate of title.

(f) A person that:

(1) fails to remove a lien or encumbrance under subsection (b); or

(2) fails to notify the owner of a vehicle or the owner's agent under subsection (c); or

(3) fails to deliver a certificate of title to the owner of a vehicle as required under subsection (a);

commits a Class C infraction.

The bill amends Ind. Code § 9-17-5-5 to delete the provision that whenever a lien is discharged, the holder shall note the discharge on the certificate of title over the signature of the holder.

Ind. Code § 9-32-4-0.5 has been added to provide that, as used in this chapter, "third party" means a person having possession of a certificate of title for a vehicle because the person has a lien or an encumbrance indicated on the certificate of title.

LEGISLATION

Mississippi

Application

2018 MS S 2277. Enacted 3/15/2018. Effective 7/1/2018.

This bill amends Miss. Code Ann. § 63-21-15 to provide that the application for the certificate of title of a vehicle, manufactured home or mobile home in this state shall be made by the owner to a designated agent, on the form the Department of Revenue (formerly, the State Tax Commission) prescribes.

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LEGISLATION
Mississippi
Retirement of title

McGlinchey Stafford assisted with the drafting of this legislation.

2018 MS H 827. Enacted 3/19/2018. Effective 1/1/2019.

This bill amends Miss. Code Ann. § 27-53-5 to provide that it shall be the duty of every manufactured home or mobile home owner to provide either (a) proof of registration in the county in which the manufactured home or mobile home is located and at the address at which utility service is to be provided, as required by subsection (1), or (b) a certified copy of a recorded affidavit of affixation, together with a copy of the initial or any subsequent written confirmation from the Department of Revenue that the title to such home has been permanently retired (adding, (b)), to each utility company whose service is procured by the owner before the utility company shall connect its services. For purposes of this section, "utility" shall mean and include water, gas, electric and telephone services, including such utilities as are owned and operated by municipalities.

No utility company shall connect, provide or transfer service without receiving and recording either (a) the number of the current registration certificate issued for the manufactured home or mobile home at the address where service will be connected, provided or transferred, or (b) instrument number or the book and page where the affidavit of affixation is recorded (adding, (b)).

The bill adds that the owner of a manufactured home or mobile home whose title has been permanently retired to real property under Section 63-21-30 shall be exempt from the requirements of subsection (1) of this section until such time as the owner of such manufactured home or mobile home files an affidavit of severance.

The bill amends Miss. Code Ann. § 27-53-15 to add that a manufactured home or mobile home shall be considered personal property for purposes of ad valorem taxation unless the manufactured homeowner or mobile homeowner who owns the land on which the manufactured home or mobile home is located either:

(a) Declares at the time of registration that the manufactured home or mobile home shall be classified as real property for ad valorem tax purposes only under subsection (2) of this section; or

(b) Permanently retires the title to real property under Section 63-21-30.

The manufactured homeowner or mobile homeowner who owns the land on which the manufactured home or mobile home is located shall have the option at the time of registration of declaring whether the manufactured home or mobile home shall be classified as personal or real property for ad valorem tax purposes only.

The county tax assessor shall issue a certificate certifying that the manufactured home or mobile home has been classified as real property for ad valorem tax purposes only. Such certificate shall contain the name of the owner of the manufactured home or mobile home, the name of the manufacturer, the model, the serial number or VIN (adding, or VIN) and the legal description of the real property on which the manufactured home or mobile home is located. The county tax assessor shall cause such certificate to be filed in the land records of the county in which the property is situated. After filing, the chancery clerk shall forward the certificate to the owner. For issuance of the certificate, a fee of Ten Dollars ($10.00) shall be collected by the county tax assessor and retained by the county tax assessor and the county tax assessor shall also collect the applicable fee pursuant to Section 25-7-9(1)(b) for the filing of the certificate and such fee shall be forwarded to the chancery clerk.

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If the title to a manufactured home or mobile home has been permanently retired to real property under Section 63-21-30, then the county tax assessor shall enter the manufactured home or mobile home on the land rolls and tax it as real property on the land on which it is located from the date of recordation of the affidavit of affixation. Upon the filing of the affidavit of affixation in the land records, the manufactured home or mobile home shall be considered real property for ad valorem taxation and for all other purposes.

The bill amends Miss. Code Ann. § 63-21-11 to provide that no certificate of title need be obtained for a manufactured home with respect to which the requirements of subsections (1) through (5) of Section 63-21-30, as applicable, have been satisfied unless with respect to the same manufactured home or mobile home there has been recorded an affidavit of severance pursuant to subsection (6) of Section 63-21-30.

Miss. Code Ann. § 63-21-16 has been amended to replace references to the State Tax Commission with the Department of Revenue.

The bill also provides that the Department of Revenue shall not issue a certificate of title to a manufactured home or mobile home with respect to which title has been retired to real property under Section 63-21-30 unless with respect to the same manufactured home or mobile home title has been severed from real property pursuant to Section 63-21-30.

The bill adds to Miss. Code Ann. § 63-21-17 that the Department of Revenue shall maintain a record of each affidavit of affixation filed in accordance with subsections (3), (4) and (5) of Section 63-21-30. The record shall state the name and mailing address of each owner of the related manufactured home, the county of recordation, the date of recordation, and the book and page number of each book of records in which there has been recorded an affidavit of affixation under subsections (1) and (2) of Section 63-21-30, the name of the manufacturer, the make, the model name, the model year, the dimensions, and the manufacturer's serial number or VIN of the manufactured home or mobile home, to the extent that such data exists, and any other information the Department of Revenue prescribes.

The Department of Revenue shall maintain a record of each manufacturer's certificate of origin submitted for the purpose of effectuating the retirement of title as provided in Section 63-21-30. The record shall state the name and mailing address of each owner of the manufactured home, the date the manufacturer's certificate of origin was submitted, the county of recordation, the date of recordation, and the book and page number of each book of records in which there has been recorded an affidavit of affixation under subsections (1) and (2) of Section 63-21-30, the name of the manufacturer, the make, the model name, the model year, the dimensions, and the manufacturer's serial number or VIN of the manufactured home or mobile home, to the extent that such data exists, and any other information the Department of Revenue prescribes.

The Department of Revenue shall maintain a record of each certificate of title accepted for surrender as provided in subsection (5) of Section 63-21-30. The record shall state the name and mailing address of each owner of the manufactured home, the date the certificate of title was accepted for surrender, the county of recordation, the date of recordation, and the book and page number of each book of records in which there has been recorded an affidavit of affixation under subsections (1) and (2) of Section 63-21-30, the name of the manufacturer, the make, the model name, the model year, the dimensions, and the manufacturer's serial number or VIN of the manufactured home or mobile home, to the extent that such data exists, and any other information the Department of Revenue prescribes.

The Department of Revenue shall maintain a record of each affidavit of severance filed in accordance with subsection (6) of Section 63-21-30. The record shall state

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the name and mailing address of each owner of the related manufactured home, the county of recordation, the date of recordation, and the book and page number of each book of records in which there has been recorded an affidavit of severance under subsection (6) of Section 63-21-30, the name of the manufacturer, the make, the model name, the model year, the dimensions, and the manufacturer's serial number or VIN of the manufactured home or mobile home, to the extent that such data exists, and any other information the Department of Revenue prescribes.

Records of affidavits of affixation, submitted manufacturer's certificates of origin, surrendered certificates of title, and affidavits of severance shall be maintained permanently and be subject to public records request. The records of affidavits of affixation, submitted manufacturer's certificates of origin, and surrendered certificates of title shall include a statement that the manufactured home is real property as provided in subsections (13) and (14) of Section 63-21-30.

The bill amends Miss. Code Ann. § 63-21-25 to provide that the Department of Revenue shall refuse issuance of a certificate of title if the certificate of title is to a manufactured home or mobile home with respect to which title has been retired to real property under Section 63-21-30 unless with respect to the same home title has been severed from real property pursuant to Section 63-21-30.

Amends Miss. Code Ann. § 63-21-30 to provide for the procedure if the legal owner of a manufactured home or mobile home and the real property to which the manufactured home or mobile home has become affixed, wishes to permanently retire the title to a manufactured home or mobile home to real property, including the form of the Affidavit of Affixation.

The bill also provides for the procedure if the legal owner of the manufactured home or mobile home whose title has been retired under this section and the real property to which the manufactured home or mobile home has become affixed, wishes to detach or sever the manufactured home or mobile home from the real property, including the form of the Affidavit of Severance.

The bill further provides for the procedure if a manufactured home or mobile home whose title has been retired pursuant to this section is destroyed completely or otherwise becomes uninhabitable, and the legal owner of the manufactured home or mobile home, and the real property to which the manufactured home or mobile home was affixed, desires to document the destruction or uninhabitability thereof, including the form of the Affidavit of Destruction.

A manufactured home or mobile home shall be deemed real property for all purposes and shall be governed by the laws applicable thereto, upon the occurrence of all of the following events:

(a) An affidavit of affixation has been duly recorded; and

(b) An application for retirement of the title to a manufactured home or mobile home has been filed with the Department of Revenue.

A manufactured home or mobile home whose title has been retired pursuant to this section shall be conveyed by deed or other real property contract and shall only be transferred or otherwise contracted together with the real property to which it is affixed, unless and until the procedures described in this section for severance or destruction and issuance of a new title are followed.

If the title has been retired under this section, for purposes of perfecting, realizing, and foreclosure of security interests, a separate security interest in the manufactured home or mobile home shall not exist, and the manufactured home or mobile home shall only be secured as part of the real property to which it is attached through a mortgage or deed of trust and such lien shall automatically attach as of the date of recording

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and must be foreclosed in the same manner as a mortgage on real property.

The bill amends Miss. Code Ann. § 63-21-43 to provide that a purchase money security interest under Chapter 9, Title 75 (Uniform Commercial Code - secured transactions) in a mobile home or a manufactured home is perfected against the rights of judicial lien creditors and execution creditors on and after the date such purchase money security interest attaches.

The bill amends Miss. Code Ann. § 63-21-64 to provide that the fee for the filing of each application for retirement, destruction or severance of title pursuant to Section 63-21-30 is $9.

LEGISLATION
South Dakota
Electronic titles

2018 SD S 42. Enacted 3/5/2018. Effective 7/1/2018.

This bill amends S.D. Codified Laws § 32-3-28 to provide that the secretary shall issue the certificate of title in paper form or electronic form. If there is no lien noted on the certificate of title or a paper copy is requested pursuant to Section 32-3-70, the secretary shall sign the original certificate of title, deliver the paper copy certificate to the owner named on the title or as otherwise directed by the owner postage prepaid, and maintain an electronic copy for record keeping. If there are one or more liens on the motor vehicle, trailer, or semitrailer, the secretary shall properly note each lien in the order of priority on the certificate of title which shall be maintained electronically until each lien is released. A secured party, if any, may obtain electronic confirmation of the party's security interest as filed and noted on the certificate of title.

Formerly, the section provided that the secretary shall issue the certificate of title in triplicate. One copy shall be retained by the secretary and the other copy shall be transmitted either by mail or electronically by computer, postage prepaid, on that day to the county treasurer of the county in which the motor vehicle, trailer, or semitrailer is to be kept.

The bill also amends S.D. Codified Laws § 32-3-70 by adding subsections (3) and (4), below: Notwithstanding any other provision of this title, the department may provide for an electronic lien filing system. If a lien has been noted electronically in the electronic lien filing system, no paper title may be issued to the owner of record or the lienholder. A paper title shall be issued under the following circumstances:

(1) The lien has been satisfied and the owner requests a title;

(2) The owner is relocating to another state and the lienholder authorizes the issuance of a title with the lien noted;

(3) The ownership listed on the title is being changed and the lienholder authorizes the issuance of a title with the lien noted; or

(4) The titled vehicle has been determined to be a salvage vehicle pursuant to Section 32-3-51.19.

A lien shall be noted or cancelled electronically if an electronic certificate of title exists and the lienholder is participating in the electronic lien filing system. A lien noted electronically is considered perfected as if a paper title was issued and a lien had been noted on the title pursuant to Section 32-3-29 or 32-3-41. A lienholder is liable for noting or canceling a lien in error.

LEGISLATION
South Dakota
Transfers

2018 SD S 90. Enacted 3/26/2018. Effective 7/1/2018.

This bill amend S.D. Codified Laws § 10-4-2.5 to provide that any transfer or reassignment of a manufactured

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home classified as real property pursuant to § 10-4-2.4 shall be accompanied by an affidavit, issued by the county treasurer of the county in which the manufactured home is assessed, stating the real property taxes that are due and payable at the time of transfer have been paid in full (formerly, stating the current year's real property taxes are paid).

The bill adds that no title may be transferred unless the real property taxes under §§ 10-9-3 and 10-21-4 are paid.

The bill amends S.D. Codified Laws § 10-21-37 to provide that, if a manufactured home is purchased or moved to a specific site on or before November first and the property has been assessed as real property and the owner of the manufactured home plans to move or destroy (formerly, to move, sell, transfer, or reassign) the manufactured home before November first in the following year, the county auditor shall levy a tax by applying the tax levy used for taxes payable during the current year on other property in the same taxing district. The owner shall pay the tax in full for the current year, not on a pro rata basis. If the taxes are paid in full, the county treasurer shall issue an affidavit stating that the current year's taxes are paid.

The bill adds that, if the manufactured home has been destroyed, the owner shall submit a landfill ticket or proof of destruction to the director of equalization.

The bill amends S.D. Codified Laws § 10-21-38 to provide that, if a manufactured home has been assessed as real property and taxes are payable and the owner of the manufactured home plans to move or destroy (formerly, move, sell, transfer, or reassign) the manufactured home before all the current taxes are paid, then the owner shall pay the current taxes in full, not on a pro rata basis. If the taxes are paid in full, the county treasurer shall issue an affidavit stating that the current year's taxes are paid.

The bill adds that, if the manufactured home has been destroyed, the owner shall submit a landfill ticket or proof of destruction to the director of equalization.

The bill amends S.D. Codified Laws § 10-9-3.2, to provide that any transfer or reassignment of a mobile home title shall be accompanied by an affidavit issued by the county treasurer of the county in which the mobile home is registered, stating that the real property taxes that are due and payable at the time of transfer have been paid in full (formerly, stating that the current year's taxes are paid). No title may be (formerly, will be) transferred or license plate issued other than on a new mobile home registration until the taxes under § 10-9-3 are paid. No transfer of title may be (formerly, shall be) completed unless the mobile home is registered as provided in § 10-9-3.

The bill amends S.D. Codified Laws § 32-7A-17 to provide that any transfer or reassignment of a mobile home or manufactured home title shall be accompanied by an affidavit issued by the county treasurer of the county in which the mobile home or manufactured home is registered, stating that the taxes that are due and payable at the time of transfer have been paid in full (formerly, stating that the current year's taxes are paid). No title may be transferred until the taxes under § 10-9-3 or 10-21-4 are paid.

The bill deletes that the county treasurer shall apply the requirements of §§ 10-21-36 to 10-21-39, inclusive, to determine if the current years taxes are paid.

No transfer of title may be completed unless the mobile home or manufactured home is registered as provided in §§ 10-9-3 or 10-4-2.6. The title or manufacturer's statement of origin shall be transferred pursuant to the provisions of §§ 32-3-3.1 and 32-3-27 (formerly, In any event the title or manufacturer's statement of origin shall be transferred within forty-five days of delivery of the manufactured home or mobile home). A violation of this section is a Class 2 misdemeanor.

Finally, the bill adds an as yet uncodified section to provide that, if a manufactured home being sold is

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reclassified as exempt property, in addition to taxes due and payable at the time of the sale, the current year's real property taxes shall be paid at the time of title transfer.

LEGISLATION

Wyoming

Duplicate titles - Bonds

2018 WY H 34. Enacted 3/10/2018. Effective 7/1/2018.

This bill amends Wyo. Stat. Ann. §§ 31-2-105 and 31-2-505 by removing bonding requirements and waiting periods for duplicate certificates of title for motor vehicles and mobile homes.

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MARC LIFSET is a Member in the firm's business law section, where he advises banks and financial institutions regarding consumer financial services issues, licensing, regulatory compliance, and legislative matters. Marc has carved a place for himself in the manufactured housing lending arena as the primary drafter and proponent of New York's Manufactured Housing Certificate of Title Act. Marc is chairperson of the MHI Finance Lawyers Committee and serves on the Board of Governors of the MHI Financial Services Division. He is the primary draft person of manufactured home titling and perfection legislation in Alaska, Louisiana, Maryland, Missouri, Nebraska, New York, North Dakota, and Tennessee. Marc represents manufactured home lenders, community operators, and retailers throughout the country and is a frequent lecturer at industry conventions.

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