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McGlinchey Stafford is pleased to bring you the Manufactured Housing Law Update, prepared by the firm's nationally-recognized consumer financial services team. For decades, McGlinchey Stafford has been a leader in the manufactured housing and mortgage lending industries, representing clients in the areas of federal and state law compliance, preemption analysis and advice, nationwide document preparation, licensing support, due diligence, federal and state examination and enforcement action defense, individual and class action litigation defense, and white collar criminal defense.

WELCOME!

As the saying goes, April showers bring May flowers. Well, April showered those in the manufactured housing industry with new decisions affecting arbitration agreements in the Fourth Circuit and the U.S. District Court in Maryland, as well as new rules pertaining to our Servicemembers under both the federal SCRA as well as state versions of the SCRA.

A U.S. District Court in Florida showered plaintiff's counsel with a gift, when it held that attorney's fees count as actual damages under RESPA. However, no dirty laundry will be aired between park lot owners and Board of Directors of Park HOAs: the videotaping of meetings between the two is banned in Florida.

Also of "note," courts are starting to grapple with the enforceability of eNotes, and fortunately, technology is prevailing.

Enjoy!

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ARBITRATION

CASE LAW

TCPA

CASE NAME: *Brenda Herndon, individually and on behalf of all others similarly situated, v. Green Tree Servicing LLC*
DATE: *03/31/2016*
CITATION: *United States District Court, M.D. Pennsylvania. Slip Copy. 2016 WL 1271406*

Plaintiff entered into a Retail Installment Contract and Security Agreement to finance the purchase of a manufactured home. The purchase agreement contained a broad arbitration clause.

The agreement and all of its associated rights were assigned to GreenPoint Credit, LLC. Green Tree Servicing, LLC, purchased the loan.

Defendant attempted to collect on Plaintiff's past-due debt pursuant to the terms of the original purchase agreement. Plaintiff thereafter filed a putative class action against Defendant, alleging violations of the Telephone Consumer Protection Act. Defendant sought to compel arbitration and to stay proceedings.

The Court found Plaintiff's primary argument—that the court may not rely on the text of the arbitration agreement because defendant failed to attach it to its opening brief—was tertiary to the main issue, was made in bad faith, and was ultimately unavailing.

The Court also found that a valid agreement to arbitrate existed, that the purchase agreement contained a Maryland choice-of-law provision, and, under Maryland law, an agreement to arbitrate is enforceable if it is a valid contract.

Further, when Plaintiff agreed to arbitrate "any controversy or claim...arising out of or relating to" the purchase of her manufactured home, any reasonable purchaser would have understood the scope of such an agreement to extend to debt collection upon default of the purchase agreement's terms.

In addition, the Court found no "material change" has taken place when a purchase agreement is assigned to a servicing agency. Whatever changes the assignment might have on the collection process were immaterial to Plaintiff's continued obligation to repay her debt.

Furthermore, the Court construed any contentions as to the validity of class arbitration to fall within the domain of the arbitrator, and, as a matter of practice, the status of Plaintiff's "putative" class was wholly incipient, and Plaintiff failed to allege any facts plausibly suggesting the presence of similarly situated complainants.

Defendant's Motion to Compel Arbitration and Stay Proceedings granted.

CASE LAW

Signed agreement

CASE NAME: *Galloway v. Santander Consumer USA, Inc.*
DATE: *04/08/2016*
CITATION: *United States Court of Appeals, Fourth Circuit. --- F.3d ----. 2016 WL 1393121*

Galloway's original contract did not include an arbitration agreement. After the contract was assigned, the creditor offered to reduce the amount of her monthly payments and sent her a new agreement that did include an arbitration clause. The letter that accompanied the agreement advised it would not be effective until it was signed by both parties. Galloway signed and returned the agreement but the creditor did not send her a copy of the agreement signed by the creditor, although it accepted her reduced payments (albeit in an amount that differed from the offer by a few cents).

After her car was repossessed, Galloway sued. The creditor moved to compel arbitration which the trial

court granted. Galloway appealed. A split appeals court affirmed, finding that CitiFinancial's actions proposing payments in an amount 86 cents more than the amount specified in the Amended Agreement constituted a counteroffer to modify the terms of the Amended Agreement in this minor way and that Galloway accepted the counteroffer by making the payments in this slightly increased amount.

COMMUNITIES

CASE LAW

FHA – Reasonable accommodation

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CASE NAME: *Castellano v. Access Premier Realty, Inc.*
DATE: *04/29/2016*
CITATION: *United States District Court, E.D. California. --- F.Supp.3d ----. 2016 WL 1588430*

Plaintiff suffered from various mental and physical health conditions and received federal SSI disability benefits. Due to her disability, Castellano requested that she be allowed to keep a cat in her apartment as an emotional support animal. The Defendants, the management, owners and employees of the apartment complex, denied her request and directed her to remove her cat from the apartment or face eviction.

Worried that she could lose her Section 8 housing if she was evicted, Plaintiff moved out and sued, alleging allege two violations of the FHA: (1) refusing to make a reasonable accommodation because of a handicap in violation of 42 U.S.C. § 3604(f); and (2) interfering with the exercise or enjoyment of rights guaranteed by the FHA in violation of 42 U.S.C. § 3617.

The Court found there was no question that Castellano suffered from mental and physical impairments. She used a cane and an electric wheelchair and installed a ramp. The Court noted that, as a general matter, individuals who meet the definition of disability for purposes of receiving SSI or SSDI benefits also qualify as disabled under the federal disability statutes. In addition, Castellano's treating physician stated that Castellano suffered from a variety of mental and physical impairments.

It was also uncontroverted that Defendants knew or should have known of Plaintiff Castellano's handicap, having received numerous letters describing Castellano's medical conditions. Castellano also stated on her rental application that she received SSI disability benefits. The Court rejected Defendants' argument that their repeated demands for more specific information about Castellano's disability amounted to a lack of knowledge.

The Court also found that the uncontroverted evidence showed that keeping a cat as an emotional support animal helped reduce Castellano's stress and anxiety, which in turn helped reduce the symptoms of her other ailments. Defendants' general concerns about health and safety did not rebut Plaintiff's claim that allowing her to keep her cat was a reasonable accommodation.

Further, the uncontroverted evidence showed that Defendants failed to provide Plaintiff with a reasonable accommodation when they refused to permit her to keep her cat. Defendants' argument that they did were merely seeking additional information was not well-taken. Even though refusal may be accompanied by other acts, refusal alone is violative of § 3604(f)(3)(B).

Given the above, the Court also found that Defendants Violated 42 U.S.C. § 3617 by interfering with Plaintiff's rights protected under the FHA.

Finally, because Defendants admitted that the management and employees were agents of the owner, the Court found that the owner was vicariously liable for the violations.

Plaintiffs' Motion for Partial Summary Judgment granted.

CASE LAW

Sale in place

CASE NAME: *Jordan v. Vieira*
DATE: *04/29/2016*
CITATION: *Court of Appeal, Sixth District, California. Not Reported in Cal.Rptr.3d. 2016 WL 1615603*

Defendant was the owner of a mobilehome park. Plaintiff arranged to purchase a mobilehome located in the Park, along with an assignment of Sellers' 12–year lease. Sellers submitted a notice of termination of tenancy. The notice stated Sellers' intent to sell the mobilehome to Plaintiff with the mobilehome to remain in the Park.

Defendant approved Plaintiff's application for tenancy but advised there were repairs and improvements to be completed prior to the approval of the sale. Sometime after approving Plaintiff's tenancy application, Defendant learned Plaintiff did not intend to live in the mobilehome but would provide it as a home for a disabled relative.

Plaintiff alleged the office manager advised her title to the home could be transferred. Plaintiff then paid Sellers and obtained record title and registration to the mobilehome. Shortly thereafter, Plaintiff began the required repairs.

Defendant threatened to terminate Sellers' tenancy unless the repairs were completed, and Plaintiff was informed that only Sellers could obtain permits and carry out repairs, that title needed to revert back to Sellers, and that Plaintiff had "no standing" with the Park.

Defendant gave Sellers 60 days to vacate and remove or sell the mobilehome.

Plaintiff filed suit, seeking injunctive and declaratory relief, and damages for interference with contract.

The trial court granted Plaintiff's preliminary injunction. Defendant appealed.

The appeals court found that the trial court erred by enjoining Defendant's assertion of a nuisance cause of action under the Mobilehome Residency Law because the action being enjoined was one for which there is a remedy at law.

The Court found that the status quo that Plaintiff sought to preserve was her position as buyer of the mobilehome and prospective tenant of the space in the Park. The order did not direct Defendant to approve the sale of the mobilehome and assign tenancy rights to Plaintiff.

The Court also concluded that Plaintiff had standing as a purchaser of a mobilehome. The contract at issue, to which Plaintiff alleged interference, was not the lease agreement between Sellers and Defendant, but Plaintiff's contract with Sellers for sale of the mobilehome.

The Court further found that requiring removal of the mobilehome before a trial on the merits would permanently deprive Plaintiff of the subject matter of her contract with Sellers.

The Court also concluded that Plaintiff alleged that Sellers "agreed to transfer title ... and to cause the assignment of a 12–year lease …" Thus, the contract included an assignment of the lease, which had yet to be fully performed.

The Court noted that Defendant was authorized to require the right of prior approval of a purchaser of a mobilehome that would remain in the Park, but was restricted in considering any factor other than Plaintiff's financial ability to pay the rent, or likely non-compliance with Park rules and regulations based on prior tenancies, and it appeared Plaintiff met the qualifications for approval, because Defendant's letter stated that the Park had "reviewed your application and approved your tenancy in space # 29 in the Park."

Also, Defendant did not cite any provision of the lease, Park rules, or statute that require a prospective tenant to be the occupant of the mobilehome.

Affirmed.

LEGISLATION

Florida

Lot rentals

2016 FL S 826. Enacted 4/1/2016. Effective 7/1/2016.

This bill amends Fla. Stat. § 723.031, Mobile home lot rental agreements, to provide that the mobile home park owner may pass on, at any time during the term of the lot rental agreement, non-ad valorem assessments, provided that those charges are not otherwise being collected in the remainder of the lot rental amount and provided further that the passing on of such non-ad valorem assessments was disclosed prior to tenancy, was being passed on as a matter of custom between the mobile home park owner and the mobile home owner, or such passing on was authorized by law. A park owner is deemed to have disclosed the passing on of ad valorem property taxes and non-ad valorem assessments if ad valorem property taxes or non-ad valorem assessments were disclosed as a factor for increasing the lot rental amount in the prospectus or rental agreement. Such ad valorem taxes, non-ad valorem assessments, and utility charges shall be a part of the lot rental amount as defined by this chapter. The term "non-ad valorem assessments" has the same meaning as provided in s. 197.3632(1)(d) ("Non-ad valorem assessment" means only those assessments which are not based upon millage and which can become a lien against a homestead).

The bill provides that if a notice of increase in lot rental amount is not given 90 days before the renewal date of the rental agreement, the rental agreement must remain under the same terms until a 90-day notice of increase in lot rental amount is given. The notice may provide for a rental term shorter than 1 year in order to maintain the same renewal date.

The bill amends Fla. Stat. § 723.059, Rights of purchaser, to provide that the purchaser of the mobile home may cancel or rescind the contract for purchase of the mobile home if the purchaser's tenancy has not been approved by the park owner 5 days before the closing of the purchase.

The bill also amends Fla. Stat. § 723.078 to prohibit the tape recording or videotaping of meetings between the board of directors of a homeowners association or its committees and the park owner.

ADOPTED RULE

Oregon

Plan review and inspection of parks

Effective 4/1/2016, this rule amends Or. Admin. R. 918-098-1010, 918-098-1012, 918-098-1015, 918-098-1025, 918-098-1210, 918-098-1215, 918-098-1305, 918-098-1320, 918-098-1470, 918 -098-1480, 918-098-1900, 918-695-0410.

The rule expands the scope of work of some certifications to allow for plan review and inspection of manufactured dwelling parks, including:

Commercial Mechanical Inspector certificate holders;

Residential Mechanical Inspector certificate holders;

Persons certified as one and two family dwelling or residential:

(A) Structural inspectors

(B) Mechanical inspectors;

(C) Plumbing inspectors; or

(D) Electrical inspectors;

Persons certified as a one-and-two family dwelling plans examiners;

Persons certified as a one and two family dwelling or residential inspectors and plans examiners;

Residential plumbing inspectors; and

Residential electrical inspectors.

The rule amendments also remove the application provisions for the Manufactured Structure Installer Inspector and the Park and Camp Installer certifications.

REPEALED RULE

South Carolina

Obsolete park rules

Effective 4/22/2016, S.C. Code Ann. Regs. 61-40, Mobile/Manufactured Home Parks, under the Department Of Health And Environmental Control, is repealed.

According to the Department, these regulations have become obsolete and are no longer needed. Under current statutes and other regulations there exists sufficient authority to address and control any major requirements related to environmental or public health issues.

South Carolina statutes and regulations to include R.61-9, Water Pollution Control Permits; R.61-56, Onsite Wastewater Systems; and R.61-58, State Primary Drinking Water Regulation, address the major requirements and issues of this regulation.

ADOPTED RULE

UTAH

Environmental health

Effective 3/02/2016, Utah Admin. Code r. 380-40-8, regarding Local Health Department Environmental Health Programs, has been amended to provide that each local health department shall ensure that there is a program including the maintenance of an inventory of regulated entities or complaints for mobile home parks consistent with R392-402.

LEGISLATION

United States

Servicemembers - Eviction

2015 US S 2393. Enacted 3/31/2016. Effective immediately.

Temporary extension of extended period of protections for members of uniformed services relating to mortgages, mortgage foreclosure, and eviction.

Section 710(d) of the Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012 (Public Law 112–154; 50 U.S.C. 3953 note) is amended—

(1) in paragraph (1), by striking "December 31, 2015" and inserting "December 31, 2017"; and

(2) in paragraph (3), by striking "January 1, 2016" and inserting "January 1, 2018".

DEFAULT SERVICING

CASE LAW

FDCPA – Notice of assignment

CASE NAME: *Vilinsky v. Phelan Hallinan & Diamond, PC*
DATE: *03/02/2016*
CITATION: *United States Court of Appeals, Third Circuit. --- Fed.Appx. ----. 2016 WL 805970*

Vilinsky defaulted on his loan. As a result, PennyMac, the mortgage holder at the time, hired Phelan Hallinan & Diamond as counsel and filed a foreclosure action. The matter was tried and a verdict was returned for PennyMac.

PennyMac sold the loan to PMT NPL Financing. Phelan sent Vilinsky a letter notifying him of the assignment. The notice identified the amount of the loan, the mortgaged property address and the mortgagors by name.

Vilinsky filed suit claiming that Phelan violated the FDCPA by communicating with him while he was represented by legal counsel in violation of 15 U.S.C. 1692c(a). Phelan filed a motion to dismiss, which the District Court granted. Vilinsky appealed.

The appeals court found that the letter was neither an explicit demand for payment nor part of a dialogue to facilitate satisfaction of a debt. First, the state court had already entered a judgment foreclosing on the New Jersey property in question. Second, the content of the letter demonstrates that its sole purpose was simply to notify Vilinsky that PennyMac had assigned its mortgage interest to PMT.

Vilinsky pointed out that the letter notified him that the assignee of the mortgage may "use and take all lawful ways and means for the recovery of all the said money and interest" and referenced the amount of the loan. According to the Court, however, Phelan was merely identifying the affected mortgage and notifying Vilinsky that the assignment gave PMT all legal rights that had previously been assigned to PennyMac.

Affirmed.

CASE LAW

FDCPA – Foreclosure

CASE NAME: *Alaska Trustee, LLC v. Ambridge*
DATE: *03/04/2016*
CITATION: *Supreme Court of Alaska. --- P.3d ----. 2016 WL 852265*

Vilinsky defaulted on his loan. As a result, PennyMac, the mortgage holder at the time, hired Phelan Hallinan & Diamond as counsel and filed a foreclosure action. The matter was tried and a verdict was returned for PennyMac.

Brett and Josephine Ambridge defaulted on their home loan. Alaska Trustee, LLC, in the business of pursuing nonjudicial foreclosures, sent the Ambridges a notice of default that failed to state the full amount due as required by the FDCPA. The Ambridges filed suit against Alaska Trustee and its owner, Stephen Routh, seeking damages under the FDCPA and the Alaska Unfair Trade Practices and Consumer Protection Act (UTPA). The superior court determined that an entity pursuing nonjudicial foreclosure is a debt collector subject to the FDCPA and awarded damages under FDCPA, and awarded injunctive relief under the UTPA. Alaska Trustee and Routh appealed.

The appeals court held that the FDCPA's definition of "debt" does not differentiate between consumer debts that are secured and those that are not, and the definition of "debt collector" covers regular collection efforts that are either direct or indirect. As to whether the nonjudicial foreclosure of a security interest is a method of "collect[ing] or attempt[ing] to collect, directly or indirectly," a "debt," the Court found that every mortgage foreclosure, judicial or otherwise, is undertaken for the purpose of obtaining payment on the underlying debt.

The Court also found that a business whose principal purpose is not "the collection of any debts" may still be a debt collector under the general definition because, though its "principal purpose" is something else, it "regularly collects or attempts to collect" debts due another. Such a business may have as its principal purpose the enforcement of security interests.

However, the Court also found that, although Routh was a "debt collector, the undisputed facts showed that Routh did not "materially participate" in creating the notices of default that the Ambridges alleged were in violation of the FDCPA.

Finally, the Court found that the FDCPA expressly states that a violation of it shall be deemed an unfair or deceptive act or practice in violation of the Federal Trade Commission Act, thereby satisfying the requirement of

AS 45.50.471 that such an act fall "within at least the penumbra of some ... statutory ... concept of unfairness,"

The decision of the superior court holding Routh liable for the violation at issue was reversed. The decisions of the superior court were otherwise affirmed.

CASE LAW

FDCPA – Creditor Identity

CASE NAME: *Janetos v. Fulton Friedman & Gullace, LLP*
DATE: *04/07/2016*
CITATION: *United States Court of Appeals, Seventh Circuit. --- F.3d ----. 2016 WL 1382174*

In its attempts to collect debts from the plaintiffs, Fulton Friedman & Gullace, LLP sent letters that identified Asset Acceptance as the "assignee" of the original creditors but said that the plaintiffs' accounts had been "transferred" from Asset Acceptance to Fulton. Nowhere in the letters did Fulton explicitly identify Asset Acceptance as the current creditor.

Plaintiffs brought suit alleging that Fulton had violated §§ 1692e, 1692e(10), and 1692g(a)(2) of the FDCPA by failing to disclose the current creditor's name and that Asset Acceptance was vicariously liable for Fulton's violations. The district court granted defendants' motion for summary judgment, holding that plaintiffs needed to present extrinsic evidence of confusion, like a consumer survey, and that even if plaintiffs had presented such evidence, their claims would still fail because the ambiguity about the identity of the current creditor was immaterial.

On appeal, the Court found that the district court correctly found that the letters were unclear, but it erred in finding that additional evidence of confusion was necessary to establish a § 1692g(a)(2) violation. Section 1692g(a) requires debt collectors to disclose specific information, including the name of the current creditor, in certain written notices they send to consumers. If a letter fails to disclose the required information clearly, it violates the Act, without further proof of confusion. Section 1692g(a) also does not have an additional materiality requirement, express or implied. Congress instructed debt collectors to disclose this information to consumers, period. Finally, because Asset Acceptance was itself a debt collector, it was liable for the violations of the Act by its agent. Reversed and remanded.

CASE LAW

Foreclosure – Acceleration

CASE NAME: *Deutsche Bank Trust Co. Americas v. Beauvais*
DATE: *04/13/2016*
CITATION: *District Court of Appeal of Florida, Third District. --- So.3d ---. 2016 WL 1445415*

American Home Mortgage Servicing, Inc. v. Beauvais, et al. was commenced on January 23, 2007. AHMSI accelerated payment of the mortgage and sought to foreclose on the full amount of the debt. On December 6, 2010, the trial court dismissed the Initial Action without prejudice because AHMS failed to appear at a case management conference.

In *Aqua Master Association, Inc. v. Beauvais, et al.*, the Association foreclosed its lien on the Property based on Beauvais' failure to pay condominium assessments. The Association obtained title to the Property subject to the AHMSI mortgage.

On December 18, 2012. Deutsche Bank (as assignee of AHMSI) sought to foreclose on the Property and alleged that Beauvais defaulted by failing to make the payment due October 1, 2006 as well as all subsequent payments. The Association answered, raising as an affirmative defense the expiration of the statute of limitations.

The trial court entered judgment in favor of the Association, determining that: (i) the action was barred by the statute of limitations because it was filed on December 18, 2012, more than five years after the filing of the complaint in the Initial Action in January 2007; and

(ii) the expiration of the statute of limitations rendered the mortgage null and void. Deutsche Bank appealed.

In *Deutsche Bank Trust Co. Americas v. Beauvais, District Court of Appeal of Florida, Third District. --- So.3d ----. 2014 WL 7156961*, a three-judge panel of the appeals court found that when a mortgage contains an optional acceleration clause, the statute of limitations commences when the lender exercises this option and invokes the acceleration clause. However, the Court concluded that the trial court erred in determining that the mortgage was null and void. That case appeared in the December 2014 McGlinchey Stafford Manufactured Housing Law Update.

On rehearing en banc, the District Court of Appeal held that the dismissal of a mortgage-foreclosure action accelerating payment on one default does not bar a subsequent foreclosure action on a later default if the subsequent default occurred within five years of the subsequent action. A mortgagee's right to file a subsequent action to foreclose on an accelerated note following a subsequent default does not turn on whether the first action to foreclose on an earlier default and acceleration was dismissed with or without prejudice and the mortgagee had no obligation to take any affirmative action to reinstate installment nature of loan or to "decelerate" loan following dismissal of first mortgage-foreclosure action.

Reversed and remanded.

CASE LAW

Foreclosure – eNote

CASE NAME: *New York Community Bank v. McClendon*
DATE: *04/13/2016*
CITATION: *Supreme Court, Appellate Division, Second Department, New York. --- N.Y.S.3d ----. 2016 WL 1442135*

McClendon executed a mortgage in favor of AmTrust Bank to secure a promissory note. The note (the "eNote") was signed by electronic signature. After the OTS closed AmTrust, the FDIC sold the plaintiff all "qualified financial contracts to which AmTrust was a party."

The plaintiff alleged McClendon defaulted and commenced foreclosure. McClendon moved to dismiss the complaint on the ground that the plaintiff lacked standing. The Supreme Court granted McClendon's motion to dismiss. The plaintiff appealed.

The appeals court found that an eNote is a "transferable record," as that term is defined under 15 USC § 7021(a)(1), and a person having control of a transferable record is the holder (15 USC § 7021[d]). New York's Uniform Commercial Code also defines "holder" as "the person in control of a negotiable electronic document of title" (UCC § 1–201[b][21][C]).

Here, the Court found that the eNote transfer history established that the eNote was transferred by the FDIC, as receiver for AmTrust Bank, to the plaintiff on March 23, 2010, more than two years before the plaintiff commenced the foreclosure action, and that the plaintiff obtained control and became the owner of the eNote. Thus, the transfer history, together with the copy of the eNote itself, were sufficient "to review the terms of the transferable record and to establish the identity of the person [or entity] having control of the transferable record" (15 USC § 7021[f]). This evidence was sufficient to establish the plaintiff's standing as the holder of the eNote and rendered the lack of proof of valid assignment irrelevant.

The trial court's order was reversed.

CASE LAW

Foreclosure – Full credit bid

CASE NAME: *Bank of America, NA v. First American Title Ins. Co.*
DATE: *04/13/2016*
CITATION: *Supreme Court of Michigan. --- N.W.2d --. 2016 WL 1453254*

Bank of America agreed to finance a percentage of the borrowers' purchases of four properties and sent closing instructions to two closing agents, defendants Westminster Abstract Company and Patriot Title Agency. The closing instructions required that a closing protection letter (CPL) be issued in connection with each closing. First American Title Insurance Co. was the title insurance company for all four sales and agreed to issue CPLs for all four closings. Under the CPLs, First American agreed to reimburse Bank of America for its actual losses incurred in connection with the closing if the losses arose out of, among other things, the fraud or dishonesty of the closing agents.

Bank of America foreclosed by advertisement on all four properties and purchased all four with credit bids. Thereafter, Bank of America sold all the properties to bona fide purchasers, claiming it lost roughly $7 million.

During the foreclosure proceedings, Bank of America discovered underlying fraud in each of the four loans and sued First American, Westminster, and Patriot.

The circuit court granted First American and Westminster summary disposition. In a split, unpublished opinion, the Court of Appeals affirmed in part and reversed in part. The majority held that the full credit bid rule barred Bank of America's claim against First American stemming from the closing on that property and concluded that Bank of America failed to create a question of fact as to whether Westminster knew of or participated in the underlying fraud in the closings. The majority also concluded that Bank of America did not establish a link between Westminster's alleged violations of the closing instructions and the claimed damages.

On further appeal, the Court found that the purpose of the full credit bid rule is merely to resolve the question of the value of the property for purposes of determining whether the mortgage debt was satisfied. The Court saw no justification for limiting or nullifying Bank of America's contractual rights by application of a rule designed to determine Bank of America's rights in relation to the mortgagors.

The Court also found that in order for First American to be liable under the CPLs, Bank of America had establish that it suffered actual losses arising out of the fraud or dishonesty of Westminster and Patriot in connection with the closings. The fraud or dishonesty by Westminster or Patriot need not be tied to their handling of Bank of America's funds or documents. As a result, Bank of America is able to offer evidence that Westminster and Patriot engaged in fraud or dishonesty in the handling of the HUD–1 settlement statements at closing, regardless of whether those documents belong to Bank of America.

Reversed and remanded.

CASE LAW

Bankruptcy – Land contract

CASE NAME: *In re Blanchard*
DATE: *04/14/2016*
CITATION: *United States Court of Appeals, Seventh Circuit. --- F.3d ---. 2016 WL 1459568*

Chapter 7 debtors, the Blanchards, entered into a prepetition land contract to sell residential property to the Hoffmans, with the debtors agreeing to obtain a mortgage loan in their own name with the property as collateral and the purchasers agreeing to pay debtors $30,000 up front and to "rent" the property for $500 per month, with remainder of purchase price due on later

date. No one recorded the land contract in the county land records.

The mortgage, with Intercity State Bank, included a lien on "all privileges, hereditaments, easements and appurtenances, all rents, leases, issues and profits, all claims, awards and payments made as a result of the exercise of the right of eminent domain, all existing and future improvements and all goods that are or are to become fixtures." The bank also obtained an Assignment of Leases and Rents as collateral for the mortgage loan but neglected to obtain an Assignment of Land Contract.

After debtors sought bankruptcy relief, the trustee filed adversary proceeding against lender, seeking to avoid the mortgage. The bankruptcy court denied the trustee's motion to declare the mortgage null and void and determined that the mortgage attached to debtors' right to receive the land contract payments. The district court affirmed, based on different reasoning, finding that the Blanchards' interest as vendors under a land contract was personal property rather than real property under Wisconsin law. The district court then found it was both necessary and appropriate to reform the mortgage to be secured by a personal-property interest in the land contract payments rather than a real-property interest in the land. The trustee again appealed.

The Court of Appeals held that under Wisconsin law, a mortgage can properly attach a lien to a vendor's interest in a land contract and, here, the language of the mortgage was broad enough to encompass debtors' interest as collateral, even without specific mention of a land contract.

The Court further found that the lender perfected its lien on the debtors' interest in the land contract by recording its mortgage in county land records rather than with the Wisconsin Department of Financial Institutions, and the trustee's interest in the land contract payments could not take priority over lender's earlier, properly recorded mortgage interest.

CASE LAW

Bankruptcy – Homestead exemption

CASE NAME: *In re Carter*
DATE: *04/15/2016*
CITATION: *United States Bankruptcy Court, W.D. Wisconsin. Slip Copy. 2016 WL 1574603*

Debtor claimed fee simple ownership of two pieces of real property; one in Madison, Wisconsin, and the other in Laona, Wisconsin. Although Carter maintained legal residence in Madison at the time of filing, she claimed the Laona residence as her exempt homestead under Wis. Stat. § 815.20. The Chapter 7 trustee objected to the claimed exemption.

According to the Court, Wis. Stat. § 815.20 lays out three questions a debtor must answer in the affirmative in order to avail herself of the $75,000 homestead exemption for a particular property. First—is the property a dwelling of the type described in Wis. Stat. § 990.01(14)? Second, has the debtor "selected" the property as her homestead? And third, does the debtor "occupy" the property?

The Court found that the Laona residence was a residence of the type described in Wis. Stat. § 990.01(14), and Carter had selected it as her homestead. Further, the evidence indicated that Carter spent significant time at two different properties simultaneously for the better part of a decade. Both of the properties were livable, Carter had habitation rights in both, and she resided in the Laona residence on weekends and holidays and in the Madison residence during the work week. That limited residence in Laona constituted occupying the premises.

Although the overwhelming weight of the documentary evidence pointed to the Madison residence as Carter's legal residence, "occupancy" is different from "legal residence," and the latter is not necessary to establish the former under § 815.20(1).

The objection to the exemption was overruled.

CASE LAW
RESPA – DAMAGES

CASE NAME: *Baez v. Specialized Loan Servicing, LLC*
DATE: *04/15/2016*
CITATION: *United States District Court, S.D. Florida. Slip Copy. 2016 WL 1546445*

According to the Complaint, Plaintiff mailed a request for information to Defendant. Defendant did not provide sufficient written acknowledgment of the request within the required time frame. Plaintiff incurred actual damages in the amount of $4.70 for certified postage for mailing the request, along "other related costs including attorney's fees associated with the review of Defendant's insufficient response."

Defendant moved to dismiss, contending that the Complaint failed to allege actual damages from the alleged violation of RESPA.

The Court found that the postage costs were incurred before any alleged RESPA violation and thus were not recoverable. The Complaint also sought damages for "other related costs including attorney's fees associated with the review of Defendant's insufficient response." By alleging this type of damage, the Complaint alleged actual damages incurred and related to an alleged RESPA violation; i.e., fees related to the review of an alleged insufficient response by Defendant. Based upon the allegations of the complaint, had Defendant properly responded to Plaintiff's request, Plaintiff would not have incurred those attorney's fees.

Defendant's Motion to Dismiss denied.

CASE LAW
Wrongful foreclosure - Damages

CASE NAME: *Holm v. Wells Fargo Home Mortgage Inc.*
DATE: *04/19/2016*
CITATION: *Missouri Court of Appeals, Western District. --- S.W.3d ----. 2016 WL 1579383*

The Holms executed a deed of trust to secure a promissory note. The lender/mortgagee was Commercial Federal Mortgage Corp. Freddie Mac acquired the Note and Wells Fargo began servicing. An insurance check in the amount of $4,467.74 was issued to cover storm damages. The Holms sent the check to Wells Fargo for endorsement so that the proceeds could be returned to the Holms for repairs to the Property. Wells Fargo refused to return the check.

The law firm of Kozeny & McCubbin, L.C. notified the Holms that their Note had been accelerated. The Holms claimed that a representative of Wells Fargo had falsely reported that the Holms were evacuating the Property due to the storm damage. Although another representative verified that they were not, the Note had nonetheless been accelerated based on the false information. The Holms also claimed they had a payment plan in place with Wells Fargo before the storm damage and that Wells Fargo had since agreed to apply the insurance proceeds check to the Note. As a result, according to the Holms, they were not in default.

Wells Fargo recorded an appointment naming Kozeny as the successor trustee of the Deed of Trust. Foreclosure of the Property was scheduled at noon on August 15, 2008. On August 14, 2008, at approximately 7:00 p.m., David Holm was finally able to speak with someone at Wells Fargo who offered a reinstatement amount of $10,306.94 and said that if he agreed to pay that amount, the foreclosure sale would be postponed. David agreed to the reinstatement terms. He was advised by Wells Fargo to contact Kozeny the next morning to

confirm the reinstatement amount and to make arrangements to deliver payment. David was not told that payment had to be received before the foreclosure sale scheduled at noon the following day.

David called Kozeny at approximately 10:00 a.m. on August 15, 2008. Kozeny confirmed the $10,306.94 reinstatement amount and told David that someone would call him back later that afternoon with directions for delivery of a cashier's check. Kozeny told David that the foreclosure sale would be postponed.

Immediately after the 10:00 a.m. phone call, David went to his local physician for treatment of stress, anxiety attacks, and panic attacks. He was directed to go to the hospital where a heart monitor was attached to his chest. Between his medical visits that morning, David arranged with his mother to secure a cashier's check in the amount of $10,306.94. With a cashier's check in his possession, David awaited the telephone call from Kozeny.

Kozeny called David at around 1:00 or 2:00 p.m. and instructed him to overnight the cashier's check to its St. Louis, Missouri, office and to send a copy of the check by facsimile. David did as instructed. Unbeknownst to the Holms, the foreclosure sale of the Property had proceeded as scheduled. Freddie Mac was the purchaser at sale.

The Holms filed a lawsuit against Wells Fargo and Freddie Mac. Count I asserted a claim for wrongful foreclosure against Wells Fargo only and sought compensatory and punitive damages. Counts II and III of the petition were asserted solely against Freddie Mac and respectively sought judgments quieting title and setting aside the successor trustee's deed.

The parties had several discovery disputes. As a result of the disputes, the trial court imposed the following discovery sanctions: (1) Wells Fargo's and Freddie Mac's pleadings were stricken; (2) Wells Fargo and Freddie Mac were prohibited: from offering any evidence at trial, from cross-examining the Holms' witnesses, and from objecting to the admission of evidence offered by the Holms with respect to liability and damages; and (3) Wells Fargo and Freddie Mac were ordered to pay attorney's fees and costs in an amount to be determined.

The trial court judgment in favor of the Holms and against Wells Fargo on Count I of the petition and awarded compensatory damages in the amount of $89,762.30 for the post-foreclosure loss in value of the Property; in the amount of $6,150 for the value of post-foreclosure repairs to the Property; and in the amount of $200,000 for emotional distress. The Judgment awarded the Holms punitive damages against Wells Fargo in the amount of $2,959,123. The Judgment found in favor of the Holms and against Freddie Mac on Count II of the petition and quieted title to the Property in the Holms.

Wells Fargo and Freddie Mac appealed.

The Court of Appeals held that: evidence supported the finding that mortgagors were not in default at time foreclosure proceedings commenced.

The Court also found, however, that having sued for damages, the Holms were precluded from seeking the remedy of quieting title to property, nor were they entitled to damages for property's post-foreclosure loss in value or for the value of post-foreclosure repairs to property.

But the Court did find that the mortgagors were entitled to damages for emotional distress.

The Court also found that an offending party has no right to insist that an uncontested case be tried to a jury, when discovery sanctions effectively render cause subject to judgment, and that the trial court acted within its discretion when it imposed sanctions for discovery abuse.

Finally, the Court found that the mortgagors were entitled to recover punitive damages, and the award of

punitive damages did not deny Wells Fargo's right to due process.

CASE LAW

Repossession – Holding collateral

CASE NAME: *VFS Financing, Inc. v. Shilo Management Corp.*
DATE: *04/20/2016*
CITATION: *Court of Appeals of Oregon. --- P.3d ----. 2016 WL 1583971*

Defendant Shilo was a borrower, and defendant Mark Hemstreet the guarantor, of a commercial loan used to purchase an airplane, which also served as collateral to secure the loan. After Shilo defaulted, VFS Financing, the creditor, filed an action to (1) recover amounts due on the promissory note against Shilo, (2) obtain a money judgment against Hemstreet for the amount of the guaranty, and (3) repossess the airplane. After obtaining possession of the airplane, plaintiff continued to pursue money damages on the breach of the promissory note and guaranty claims. Defendants argued that their expert would testify that plaintiff's failure to sell the airplane in a timely and commercially reasonable manner created a material issue of fact that prevented summary judgment for plaintiff. The trial court granted summary judgment to plaintiff. Defendants appealed.

The appeals court found that New York law controlled here, that that under Article 9 of the UCC, section 601, a secured party may seek to enforce more than one remedy at the same time.

Therefore, it is not commercially unreasonable for a secured party to litigate damage claims on a debt while continuing to hold the secured property, and defendants could not create a triable issue of fact by arguing that their expert would testify that it was, in fact, commercially unreasonable for plaintiff not to sell the collateral while pursuing the damages claims, because New York law provides otherwise as a matter of law.

Affirmed.

In a footnote, the Court recognized that secured parties do owe substantive duties in holding and selling the collateral that secures the underlying debt, and if those duties are breached, debtors may have recourse to address such a breach. For instance, a debtor may seek an order from the court directing the secured party to take some action with respect to the collateral. In addition, if the secured party sells the collateral in a commercially unreasonable manner, the debtor can also file a separate lawsuit at that point. Further, if the secured party sells the collateral and sues for the amount of a deficiency, the debtor may argue in the deficiency action that the sale was not commercially reasonable.

CASE LAW

Foreclosure – eNote

CASE NAME: *Rivera v. Wells Fargo Bank, N.A.*
DATE: *04/20/2016*
CITATION: *District Court of Appeal of Florida, Fourth District. --- So.3d ----. 2016 WL 1579076*

The borrowers executed an e-note, secured by a mortgage, in favor of Homebuyers Financial, LLC. The mortgage identified Homebuyers as the lender and MERS as the mortgagee.

Wells Fargo (the "bank") filed a complaint to foreclose the mortgage The bank alleged Fannie Mae was the owner of the note; the bank was the servicer of the loan and holder of the note; and Fannie Mae authorized the bank to foreclose.

The borrowers alleged that the bank "failed to allege ultimate facts as to how or why it came to be the owner and holder of the note and mortgage when the Note was secured," and challenged the "lack of authenticity and/or validity of any signatures or indorsements on the Note ..."

The trial court entered a judgment of foreclosure in the bank's favor. The Borrowers appealed, claiming that the bank did not prove that: (1) it had pre-suit possession of the e-note; (2) the e-note contained the borrowers' signatures; (3) the e-note's terms for electronic transfers of the e-note to later holders were met; or (4) Fannie Mae owned the e-note and authorized the bank to pursue the foreclosure.

The borrowers' first and third arguments were not raised in the trial court and thus were not cognizable on appeal.

Finding that the borrowers did not introduce any evidence to support a finding that their electronic signatures on the e-note were forged or unauthorized, the Court held that the bank was not required to prove that their electronic signatures were valid.

The Court also found that, applying the Uniform Electronic Transaction Act, the bank presented competent, substantial evidence proving that Fannie Mae owned the e-note and authorized the bank to pursue the foreclosure. The e-note, on its face, was a "transferable record" because it was an electronic record that would be a note under chapter 673 if it were in writing, and its issuer expressly agreed on its face that it was a transferable record. The bank showed that the bank, as Fannie Mae's servicer, employed a system reliably establishing Fannie Mae as the entity to which the e-note was transferred. The bank's system stored the e-note in such a manner that a single authoritative copy of the e-note existed which was unique, identifiable, and unalterable. That authoritative copy identified Fannie Mae as the entity to which the transferable record was most recently transferred and was supplemented by the "Summary Information" sheet, describing the bank as the "Controller" and "Delegatee" of the e-note and indicating that the e-note was located with the bank, and by the document from MERS showing that the bank had electronic possession of the e-note.

Because the bank proved that Fannie Mae had control of the e-note, and that the bank was Fannie Mae's designated custodian, the bank was the e-note's holder and had the same rights as a holder of an equivalent record or writing under the Uniform Commercial Code. Delivery, possession, and indorsement were not required to exercise any of those rights.

Affirmed.

CASE LAW

Foreclosure – Servicer liability

CASE NAME: *Daniels v. Select Portfolio Servicing, Inc.*
DATE: *04/26/2016*
CITATION: *Court of Appeal, Sixth District, California. --- Cal.Rptr.3d ----. 2016 WL 1688595*

Appellants Julia and Andre Daniels obtained an adjustable rate loan secured by a deed of trust on their residence. Appellants spent years in unsuccessful attempts to obtain a loan modification from their then-loan servicer, Bank of America, N.A. In the process, they fell behind on their loan payments, allegedly at the behest of BofA.

Appellants sued BofA and several other entities to prevent a non-judicial foreclosure sale of their home and to collect monetary damages. Respondents are four entities with ties to the deed of trust on appellants' residence: Select Portfolio Servicing, Inc. (SPS) and BofA, both of which serviced appellants' loan; U.S. Bank National Association (U.S.Bank), the trustee of the securitized trust that owns the loan; and ReconTrust Company, N.A. (ReconTrust), the substituted trustee of the deed of trust (collectively respondents).

The trial court sustained SPS and U.S. Bank's demurrer to the first amended complaint without leave to amend and entered judgment in their favor. The trial court dismissed all of the claims against BofA and ReconTrust by way of a motion for judgment on the pleadings and entered a

second judgment in their favor. Appellants appealed both judgments of dismissal.

The appeals court reversed and remanded with directions, holding, among other conclusions, that: when a lender acquires by assignment a loan being administered by a loan servicer, the lender may be liable to the borrower for misrepresentations made by the loan servicer, as the lender's agent, after that assignment; and, a loan servicer may owe a duty of care to a borrower through application of the *Biakanja* factors, even though its involvement in the loan does not exceed its conventional role.

In *Biakanja v. Irving (1958) 49 Cal.2d 647, 320 P.2d 16*, the California Supreme Court held that whether the defendant in a specific case "will be held liable to a third person not in privity is a matter of policy and involves the balancing of various factors," including: (1) "the extent to which the transaction was intended to affect the plaintiff," (2) "the foreseeability of harm to [the plaintiff]," (3) "the degree of certainty that the plaintiff suffered injury," (4) "the closeness of the connection between the defendant's conduct and the injury suffered," (5) "the moral blame attached to the defendant's conduct," and (6) "the policy of preventing future harm."

The Court also held that the servicer's alleged oral agreement to grant a loan modification to the borrowers was not sufficiently definite to be enforceable; and the servicer's alleged oral agreement to grant a loan modification to the borrowers was insufficiently clear and unambiguous to support a promissory estoppel.

CASE LAW

Tax liens – Property tax lenders

CASE NAME: *Billings v. Propel Financial Services, L.L.C.*
DATE: *04/29/2016*
CITATION: *United States Court of Appeals, Fifth Circuit. --- F.3d ----. 2016 WL 1729421*

In each of these four consolidated cases, plaintiffs were individuals who obtained property tax loans from defendant property tax lenders in exchange for the transfer of their tax liens pursuant to Sections 32.06 and 32.065 of the Texas Tax Code. Each loan was evidenced by a promissory note executed by the plaintiff and payable to the lender. In each case, plaintiffs brought suit against the defendant lenders alleging, inter alia, that defendants committed TILA violations.

In three of the consolidated cases, the district court denied defendants' motions to dismiss, concluding that TILA does apply to the tax lien transfers, but certified the question for immediate appeal. In the fourth case, the district court held that because property taxes are not "debt" under Texas law, and the transfer of the tax liens to a private party does not change the nature of the tax obligation such that it becomes "debt," the transfer of a tax lien to a private lender is not a consumer credit transaction subject to TILA. These appeals, now consolidated, followed.

The Court found that the payments made by defendants to the relevant taxing authorities and the subsequent transfer of the tax liens and execution of the promissory notes did not extinguish the original tax obligations, but rather, simply transferred the preexisting tax obligations to new entities. Thus, the transfers and promissory notes did not create new debts that would be subject to TILA, but rather transferred existing tax obligations, which were not "debts" subject to TILA.

LEGISLATION

Idaho

SCRA – Active duty

2016 ID H 473. Enacted 3/22/2016. Effective 7/1/2016.

This bill amends Idaho Code § 46-409, under the Militia Civil Relief Act, to make the provisions of SCRA, 50 U.S.C. §§ 3901 through 4043, applicable to any member of the

air or army national guard who is called or ordered by the governor to state active duty, or to duty other than for training, deleting the requirement that the active duty be for a period of 30 consecutive days or more.

LEGISLATION
Indiana
SCRA – Active duty

2016 IN S 362. enacted 3/22/2016. Effective 7/1/2016.

This bill amends Ind. Code § 10-16-7-23 to provide that "active duty" includes state active duty under an order of a governor of another state as provided by law and to provide that the rights, benefits, and protections of the federal Servicemembers Civil Relief Act, 50 U.S.C. App. 501 et seq., apply to a member of the national guard of another state.

LEGISLATION
Kentucky
Adverse liens – Public nuisance

2016 KY H 422. Enacted 4/9/2016. Effective 7/11/2016.

This bill adds an as yet uncodified section to Ky. Rev. Stat. Ann. Chapter 65 to provide that it shall be unlawful for the owner, occupant, or person having control or management of any premises within a local government to permit a public nuisance, health hazard, or source of filth to develop thereon through the accumulation of:

(a) Junked or wrecked automobiles, vehicles, machines, or other similar scrap or salvage materials, excluding inoperative farm equipment;

(b) One (1) or more mobile or manufactured homes as defined in KRS 227.550 that are junked, wrecked, or inoperative and which are not inhabited;

(c) Rubbish; or

(d) The excessive growth of weeds or grass.

Unless imminent danger exists on the subject premises that necessitates immediate action, the local government shall send, within fourteen (14) days of a final determination after hearing or waiver of hearing by the owner, a copy of the determination to any lien holder of record of the subject premises by first-class mail with proof of mailing. The lien holder of record may, within forty-five (45) days from receipt of that notice, correct the violations cited or elect to pay all civil fines assessed for the violation and all charges and fees incurred by the local government in connection with the enforcement of the ordinance, including abatement costs.

A local government shall have a lien against the property for all civil fines assessed for the violation and for all charges and fees incurred by the local government in connection with the enforcement of the ordinance, including abatement costs. The affidavit of the code enforcement officer shall constitute prima facie evidence of the amount of the lien and the regularity of the proceedings pursuant to this section, and shall be recorded in the office of the county clerk. The lien shall be notice to all persons from the time of its recording and shall bear interest thereafter until paid. The lien created shall take precedence over all other liens, except state, county, school board, and city taxes, except as provided below. The local government shall possess the lien for ten (10) years following the date of the final, nonappealable order of a code enforcement board or final judgment of the court. The lien may be enforced by judicial proceeding.

The lien provided above shall not take precedence or priority over a previously recorded lien if:

(a) The local government failed to provide the lien holder a copy of the determination; or

(b) The lien holder received a copy of the determination as required of this section, and the lien holder corrected the violations or paid all civil fines assessed for the violation and all charges and fees incurred by the local

government in connection with the enforcement of the ordinance, including abatement costs.

OPINION LETTER
Massachusetts
Debt collectors - Attorneys

Issued 4/1/2016.

In this opinion letter, Merrily S. Gerrish, Deputy Commissioner of Banks and General Counsel, advised that the Division has reconsidered its recent interpretation of the attorney-at-law exemption set forth at Mass. Gen. Law ch. 93, § 24, and, as a result, has determined that it will withdraw its November 2nd opinion (and its related follow up opinion dated February 11, 2016).

Therefore, the Division will not require law firms to become licensed as debt collectors solely because they are primarily engaged in consumer debt collection or regularly collect consumer debt.

LEGISLATION
Mississippi
Foreclosure sale of personal property

2016 MS H 504. Enacted 4/5/2016. Effective 7/1/2016.

This bill repeals Miss. Code Ann. § 73-4-53, which provides for repeal of the Mississippi Auctioneers License Act.

Note: the Act does not apply to a foreclosure sale of personal property conducted personally by the mortgagee or other secured party or an employee or agent of such mortgagee or other secured party acting in the course and scope of his employment if the employee or agent is not engaged otherwise in the auction business and if all property for sale in the auction is subject to a security agreement.

ADOPTED RULE
Missouri
Expired debt – Suit

Effective 6/30/2016, Mo. Code Regs. Ann. tit. 15, § 60-8.100, Threatening to File or Filing Suit on Certain Consumer Debt, is added.

The practices specified are not intended to be an all-inclusive list of practices which are unfair, but this rule enumerates specific practices which are unfair and are violative of Mo. Rev. Stat. § 407.020 of the Merchandising Practices Act.

The rule provides that:

(1) It is an unfair practice for any person to threaten to file a civil action, or to file a civil action, for a debt that is primarily for personal, family, or household purposes, if such debt has been —

(A) In default for a period of time such that the statute of limitation to file a civil action for collection of the debt has expired;

(B) Discharged by a bankruptcy court;

(C) Declared void by a court of competent jurisdiction; or

(D) Deemed fully satisfied pursuant to an agreement with the consumer and the creditor or its assigns.

ADOPTED RULE
Missouri
Expired debt – Reaffirmation

Also effective 6/30/2016, Mo. Code Regs. Ann. tit. 15, § 60-8.110, Reaffirmation of Consumer Debt Without Valuable Consideration, has been added.

This new rule provides:

(1) It is an unfair practice to seek or obtain without valuable consideration a reaffirmation of an obligation

arising out of any debt that is primarily for personal, family, or household purposes, and —

(A) For which the statute of limitation to file a civil action for collection of the debt has expired;

(B) That has been discharged in bankruptcy;

(C) That has been declared void by a court of competent jurisdiction; or

(D) That has been deemed fully satisfied pursuant to an agreement with the consumer and the creditor or its assigns.

LEGISLATION
VIRGINIA
SCRA – Appointment of counsel

2016 VA S 27. Enacted 4/1/2016. Effective 7/1/2016.

This bill amends Va. Code Ann. § 8.01-15.2, Servicemembers Civil Relief Act; default judgment; appointment of counsel, to provide that where appointment of counsel is required pursuant to 50 U.S.C. Section 3931 or 3932 or another section of the Servicemembers Civil Relief Act, the court may assess reasonable attorney fees (adding, "reasonable") and costs against any party as the court deems appropriate, including a party aggrieved by a violation of the Act, and shall direct in its order which of the parties to the case shall pay such fees and costs. Such fees and costs shall not be assessed against the Commonwealth unless it is the party that obtains the judgment.

The bill adds that the appointed counsel may issue a subpoena duces tecum for all discoverable electronic and print files, records, documents, and memoranda regarding the transactional basis for the suit. If requested in the subpoena, the plaintiff shall also deliver all documents or information concerning the location of the servicemember.

The bill also adds that counsel appointed pursuant to the Servicemembers Civil Relief Act shall not be selected by the plaintiff or have any affiliation with the plaintiff. However, counsel for the plaintiff may provide a list of attorneys familiar with the provisions of the Servicemembers Civil Relief Act upon the request of the court.

LEGISLATION
United States
SCRA – Foreclosure

2015 US S 2393. Enacted 3/31/2016. Effective immediately.

Temporary extension of extended period of protections for members of uniformed services relating to mortgages, mortgage foreclosure, and eviction.

Section 710(d) of the Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012 (Public Law 112–154; 50 U.S.C. 3953 note) is amended—

(1) in paragraph (1), by striking "December 31, 2015" and inserting "December 31, 2017"; and

(2) in paragraph (3), by striking "January 1, 2016" and inserting "January 1, 2018".

INSTALLATION

LEGISLATION
Idaho
Factory Built Structures Advisory Board

2016 ID H 371. Enacted 4/5/2016. Effective 7/1/2016.

This bill includes manufactured homes and mobile homes as factory built structures and subjects them to the regulations of the factory built structures advisory board.

The bill amends Idaho Code §§ 39-4001 et seq. to replace references to the state building code board with the "factory built structures advisory board."

The bill amends Idaho Code § 39-4301 to add definitions for:

"Factory built structure" as any building or building component, including a manufactured home, a mobile home or a modular building, that is of closed construction and is entirely or substantially prefabricated or assembled at a place other than the building site;

"Manufactured home" as a structure as defined in section 39-4105, Idaho Code; and

"Mobile home" as a structure as defined in section 39-4105, Idaho Code.

Idaho Code § 44-2101A has been amended to provide that "Board" means factory built structures advisory board established in section 39-4302, Idaho Code. Formerly, "Board" meant the manufactured housing board established in section 44-2104, Idaho Code.

The bill amends Idaho Code § 44-2103 to provide that the fees for licensing of retailers, resale brokers, installers, manufacturers, salesmen and RMEs collected by the division of building safety under the provisions of this chapter shall be paid into the factory built structures account (formerly, the manufactured housing account).

Idaho Code § 44-2104, as amended, replaces the Manufactured Housing Board with the Factory Built Structures Advisory Board.

Finally, the bill amends Idaho Code § 44-2107 to provide that certain violations regarding manufactured homes may be tried in a court of competent jurisdiction.

LEGISLATION

Oklahoma

Definition of manufactured home

2015 OK H 2378. Enacted 4/14/2016. Effective 11/1/2016.

This bill amends Okla. Stat. tit. 68, § 2101 to provide that the definition of "manufactured home" shall not mean a park model recreational vehicle as defined in Section 1102 of Title 47 of the Oklahoma Statutes.

ADOPTED RULE

Texas

Miscellaneous manufactured housing rules

Effective 5/15/2016, amendments have been made to the following subsections of 10 Tex. Admin. Code Chapter 80. According to the Texas Department of Housing and Community Affairs, the amendments are, for the most part, for purposes of clarification.

§80.1. Texas Manufactured Housing Standards Code.

The amended rule provides that the manufacturer, or retailer, or installer may request a consumer complaint home inspection (adding, "installer").

§80.30. All Licensees' Responsibilities.

This rule has been amended to provide clarification the advertisements include those on social media.

§80.32. Retailers' Responsibilities and Requirements.

This rule has been amended to add that a person may exercise their right of rescission of contract for sale, exchange, or lease-purchase of home pursuant to §1201.1521 of the Standards Act within three (3) business days without penalty or charge.

§80.41. License Requirements.

This rule has been amended to provide that, should the two-year approval time for a continuing education provider expire in between regularly scheduled board meetings, the executive director may issue approval to continue providing services until the next board meeting upon receipt of the required renewal application, fee, and necessary documentation of education material.

The rule has also been amended to prevent former license holders whose license was revoked, suspended, and/or denied from applying for a salesperson's license when they may be viewed as unsuitable to work in the manufactured housing industry.

§80.71. Rules for Hearings.

This rule has been amended to provide that the Department may serve the notice of hearing on the respondent at his or her last known address as shown by the Department's records.

The amended rule also adds that, if the administrative law judge grants a default but does not issue a default proposal for decision and instead issues a default order dismissing the case and returning the file to the Department for informal disposition on a default basis in accordance with §2001.056 of the Texas Government Code, the Executive Director may issue a final order deeming the allegations in the Notice of Hearing as true.

§80.73. Procedures for Handling Consumer Complaints.

This amendment reminds license holders of the risk of requesting an extension without sufficient basis well in advance in case the request is denied.

§80.90. Issuance of Statements of Ownership and Location.

This rule has been amended by adding "and/or personal property" in the provision that when a manufactured home is to be designated for use as a dwelling and/or personal property after the home has been designated for business use, salvage, or as real property, evidence of a satisfactory habitability inspection by the Department.

NEWSLETTER

HUD

Manufactured Housing Newsletter

Off Site Fabrication Memorandum

On February 25, 2016, HUD issued a memorandum clarifying the responsibilities of the manufacturers and IPIAs regarding components of a manufactured home that are either fabricated off-line by the manufacturer, (within the home manufacturer's production facility or at off-site manufacturer locations), or produced by other entities. Some fabricated components used in manufactured homes such as frames, that are not listed or certified, are being produced off-line and in other instances are being purchased from unaffiliated, independent entities. In cases where the component is built at an off-line location under the control or ownership of the home manufacturer's corporation or parent corporation, the home manufacturer's quality assurance manual must clearly address the production and inspection of the component. The production process for off-line components is also subject to the certification inspection and ongoing surveillance inspections by the IPIA during each visit to a home manufacturer's facility as required by 24 C.F.R. § 3282.362.

If a home manufacturing corporation builds and ships frames from an off-site production location, which is under the control or ownership of the home manufacturer corporation or parent corporation, to the main production facility, the manufacturer must ensure that the frame is inspected as part of its production and quality assurance process for proper compliance, prior to the frame being introduced to the on-line production process. The IPIA is also required to conduct an inspection at this phase or stage of production at the off-site facility, as part of its ongoing surveillance responsibility, along with making sure that the manufacturer follows its quality assurance manual.

In contrast, if a home manufacturer purchases frames from an off-site location that has no association or corporate affiliation with the home manufacturer (i.e., independent supplier), then the manufacturer is still required to ensure that the frame is inspected for full compliance and accepted prior to the frame being introduced to the on-line production process. However, the IPIA is only required to make sure that the manufacturer conducts receiving and acceptance inspections and complies with the applicable provisions outlined in the manufacturer's quality assurance manual.

In view of the above clarifications, HUD requires manufacturers and IPIAs to update and incorporate all required inspections for off-site fabricated components into its quality control program and quality assurance manual and to update plant certifications as appropriate.

Manufactured Housing Installation Program Implemented in the 13 HUD-Administered States

Exciting changes have occurred in the manufactured housing industry due to the implementation of the Manufactured Home Installation Program by the Department of Housing and Urban Development (HUD). The program enforces regulations set forth in 24 Code of Federal Regulations (CFR) 3285 and 3286. SEBA Professional Services, LLC (SEBA) is pleased to support the Department with the development, implementation and management of the HUD-Administered Manufactured Home Installation Program (HUD Installation Program).

The program has been implemented in 13 states that do not operate their own qualifying installation program and therefore fall under HUD's jurisdiction. The 13 HUD-administered states are: Alaska, Connecticut, Hawaii, Illinois, Maryland, Massachusetts, Montana, Nebraska, New Jersey, Rhode Island, South Dakota, Vermont, and Wyoming. The program was rolled out to all 13 states in phases between July 2014 and January 2015, with the final six states required to be fully compliant with program requirements by June 1, 2016.

The HUD Installation Program includes, but is not limited to, requirements for installer training and licensing, 100% inspection of new manufactured homes by qualified inspectors, and information reporting by retailers. The Department and SEBA host webinars and monthly conference calls to educate and maintain open dialogue with the manufactured housing industry. In addition, representatives from HUD and SEBA have given presentations at several industry meetings, including; State Administrative Agency, Manufactured Housing Consensus Committee Conference, Maryland Building Officials Association meetings, Connecticut Manufactured Housing Association and Massachusetts Manufactured Housing Association meetings. Currently, the Department and SEBA are confirmed to attend the Northeast Super Symposium V in Albany, NY on April 20-21, 2016, the Illinois Manufactured Housing Association Annual Conference on May 19, 2016, and Nebraska Manufactured Housing Association Annual Meeting on May 4 and 5, 2016.

Mary McBrady, Executive Director of the Massachusetts Manufactured Housing Association had this to say of the Installation Program: "Many of the initial questions on the new HUD default state installation license program were answered at the November 17, 2015 MMHA Annual Meeting (Massachusetts) with the 45 minute power-point presentation by the professionals from SEBA along with HUD's Angelo Wallace. The handouts were most helpful and clear on all of the program details. Some pushback was anticipated, yet there was none. Following the presentation, MMHA continues to get the word out about the May 1, 2016 deadline for licensing installers via a monthly e-blast, our website and fielding calls on training opportunities. Overall, this is falling into place step-by-step. Experienced installers have expressed satisfaction on the on-line certification process. Our next challenge will be providing the experience, and training opportunities for those new to this field. Overall, the

program seems to place HUD code factory built manufactured homes on par with modulars, with a clearly outlined, well-documented installer license procedure, thus ensuring the new consumer peace of mind for a quality end-product."

Since July 2015, the Department has approved four organizations/providers to train installers of manufactured homes. As of March 2016 the approved programs have trained a combined 165 individuals to perform manufactured home installations in accordance with federal standards. Training is a requirement for installer licensing, which has also been successful. As of March 2016, 78 installers have received a HUD Manufactured Home Installer License. Feedback from installers who have taken the courses has been positive, with installers often remarking on the ease of the programs and the wealth of knowledge obtained from training. One trainee stated that "after 32 years in the industry I am pleased to say we are now doing it right. Thank you!"

Both HUD and SEBA anticipate the continued growth and success of the Installation Program, and are very pleased with the positive feedback received from industry members and stake-holders. The program's success is largely due to industry members that communicate with the Department and SEBA regularly to provide feedback and insight into real-world practices within the industry. With continued industry involvement, and the dedication of everyone involved in the Installation Program, it is expected that manufactured housing will continue to be a safe and affordable housing option.

For more information on the HUD Installation Program, please visit our website at: http://manufacturedhousinginstallation.com.

Office of Manufactured Housing Programs Launches New Educational Materials for the Dispute Resolution Program

The HUD Manufactured Home Dispute Resolution Program (DRP) provides timely resolution of disputes between manufacturers, retailers and installers regarding the responsibility for correction or repair of alleged defects reported by the homeowner or others in the one-year period after the first installation of the home. The program is intended to address defects in construction, safety and installation and does not address cosmetic issues and contractual agreements. Over the past year and a half, the Office of Manufactured Housing Programs (OMHP), with assistance from its contractor, Savan Group, LLC, has ramped up its efforts to educate retailers, manufacturers, installers and consumers about the HUD Dispute Resolution Program.

Requests for dispute resolution are typically received from consumers, but retailers, manufacturers and installers can also submit a request for dispute resolution when involved with disagreements between parties regarding unresolved manufactured home issues.

In an effort to better educate all manufactured housing stakeholders about the program, OMHP has developed new educational materials, including an illustrative video, website, online fact sheet, tri-fold brochure, and FAQs. To ensure that stakeholders under-stand how to use the program, and to answer questions about the purpose of the program, it is important that State Administrative Agencies (SAAs), associations and other manufactured housing organizations share HUD's Dispute Resolution Program education-al materials with their members and within their organizations.

Here are two simple ways SAAs, associations and other manufactured housing organizations can help educate retailers, manufacturers, and consumers about the DRP:

Add a link to the DRP website to your website (www.huddrp.net): The DRP website provides detailed information regarding the purpose of the program, which states have a Dispute Resolution Program administered by HUD, and how to submit a request for dispute

resolution. The website also serves as a hub for other educational materials, including the illustrative video, digital fact sheet, tri-fold brochure, and FAQs.

Participate in an upcoming webinar. OMHP will hold industry webinars to provide the manufactured housing industry with important information about the Dispute Resolution Program. During the calls, participants will have the opportunity to ask questions about the program and/or request more information. Manufactured housing industry organizations will be contacted regarding up-coming webinars.

If you would like to learn more about Dispute Resolution Program educational materials, please contact Demetress Stringfield at Demetress.E.Stringfield@hud.gov, Shelby Giles at sgiles@savangroup.com, or call 571-882-2928.

LENDING

ADOPTED RULE

Idaho

Disclosures

Effective 3/25/2016, this rule amends Idaho Admin. Code r. 12.01.10 to update references to incorporated federal laws and regulations (Truth in Lending and Regulation Z as well as the Real Estate Settlement Procedures Act and Regulation X) and eliminates duplicative disclosure requirements and unnecessary paperwork for mortgage brokers/lenders.

LICENSING

ADOPTED RULE

Washington

Consumer Loan Act

Effective 4/30/2016, the rules that implement the Consumer Loan Act, Wash. Admin. Code §§ 208-620-010, et seq., have been amended.

The rule amends Wash. Admin. Code § 208-620-010, to provide that "advertise, advertising, and advertising material" includes social media, instant messages, or electronic bulletin boards.

The rule provides that "business day" means Monday through Friday excluding federally recognized bank holidays.

Also, "individual servicing a mortgage loan" includes a person who on behalf of a lender or servicer licensed by this state, or a lender or servicer exempt from licensing, who collects or receives payments including payments of principal, interest, escrow amounts, and other amounts due, on existing obligations due and owing to the exempt lender or servicer for a residential mortgage loan when the borrower is in default, or in reasonably foreseeable likelihood of default, working with the borrower and the licensed lender or servicer, collects data and makes decisions necessary to modify either temporarily or permanently certain terms of those obligations, or otherwise finalizing collection through the foreclosure process.

The rule provides that an individual "offers or negotiates terms of a residential mortgage loan" if the individual:(a) Presents for consideration by a borrower or prospective borrower particular residential mortgage loan terms; or (b) Communicates directly or indirectly with a borrower, or prospective borrower for the purpose of reaching a mutual understanding about prospective residential mortgage loan terms.

Under the definition of "residential mortgage loan," the rule provides that “dwelling” is as defined in the Truth in Lending Act.

The rule deletes the definition of "simple interest method" and refers, instead, to WAC 208-620-011.

The amendment also provides that the definition of "underwriter" is pursuant to WAC 208-620-011.

The rule amends Wash. Admin. Code § 208-620-011 to provide that a residential mortgage loan processor or underwriter engaged as an independent contractor by a licensee must hold a mortgage loan originator license (adding, “residential mortgage”).

The rule provides that "residential mortgage loan modification services" may include the collection of data for submission to another person (formerly, “entity”) performing mortgage loan modification services or to a residential mortgage loan servicer.

With reference to “simple interest method,” the rule deletes the provision that for nonresidential mortgage loans, each payment must first be applied to any unpaid penalties, fees, or charges, then to accumulated interest, and last to the unpaid balance of the principal amount until paid in full.

The rule deletes the distinction between those loans and residential mortgage loans.

Wash. Admin. Code § 208-620-104 has been amended to exempt from licensing as a consumer loan company any person making a loan primarily for business, commercial, or agricultural purposes unless the loan is secured by a lien on the borrower's primary dwelling (formerly, “residence”).

The bill adds an exemption for a person selling property they own, that does not contain a dwelling, when the property serves as security for the financing. The exemption is not available to individuals subject to the federal S.A.F.E. Act or any person in the business of constructing or acting as a contractor for the construction of residential dwellings. See also WAC 208-620-232.

Also exempted are individuals who make loans or extend credit, secured or unsecured, to immediate family members and individuals who extend credit on the sale of their primary dwelling.

The rule amends Wash. Admin. Code § 208-620-105 to exempt from licensing as a mortgage loan originator any individual required to be registered while employed by a covered financial institution as defined in regulation G, 12 C.F.R. Sec. 1007.102 and individuals employed by a licensed residential mortgage loan servicing company engaging in activities related to servicing, unless licensing is required by federal law or regulation.

The rule amends Wash. Admin. Code § 208-620-231 to provide that persons (formerly, “companies”) servicing loans they originated and persons (formerly, “companies”) servicing loans owned by other persons (formerly, “companies”) must have a consumer loan license to service residential mortgage loans secured by Washington residential real estate or obligating Washington residents

Wash. Admin. Code § 208-620-234 has been amended to provide a company that provides loan processing or underwriting services on residential mortgage loans may license under the Mortgage Broker Practices Act, chapter 19.146 RCW.

The rule amends Wash. Admin. Code § 208-620-240 to provide that all loans you broker or make to Washington residents, secured and unsecured, are subject to the authority and restrictions of the act including the provisions relating to the calculation of the annual assessment (adding, “broker”).

The rule also amends Wash. Admin. Code § 208-620-301 to add that any manager or any person who takes a residential mortgage loan application in Washington,

negotiates the terms or conditions of a residential mortgage loan on Washington property, or holds themselves out as being able to conduct those activities, must have a Washington mortgage loan originator license. Washington licensed loan originators must work from a licensed location.

Any manager who directly supervises loan processor or underwriting employees must hold a mortgage loan originator license. The loan originator license can be from any state. Washington licensed loan originators must work from a licensed location.

Any manager who directly supervises Washington licensed mortgage loan originators must themselves hold a Washington loan originator license.

Washington licensed loan originators must work from a licensed location.

Licensure is for the day-to-day operational supervisors.

Supervisory plans must be written. The details of the plan and how it is implemented must include consideration of the location of the supervisor and employees supervised, the number of employees supervised, and the volume of work performed by the supervised employees. Supervisory plans must be maintained as part of the business books and records.

The rule amends Wash. Admin. Code § 208-620-310 to provide that a location that is solely providing loan processing or underwriting or other back-office services on Washington loans and has only incidental contact with the borrower after an application has been taken, is not required to be licensed (adding, "after an application has been taken").

The rule amends Wash. Admin. Code § 208-620-328 to provide that you must report your loan origination and residential mortgage loan servicing volume as directed and on the form prescribed by the director (deleting, "each year during the annual assessment period").

Wash. Admin. Code § 208-620-371 has been amended to provide that the director may prohibit any officer, principal, or employee from participating in the affairs of any licensee if that officer, principal, or employee has been convicted of or pled guilty or nolo contendere to: a gross misdemeanor involving dishonesty or financial misconduct.

The rule amends Wash. Admin. Code § 208-620-490 to provide that you must amend your NMLS record within ten days after an occurrence of any of the following:

(h) A change in primary company contact or primary consumer complaint contact; or (i) A change in your response to a disclosure question within NMLS. You must upload the document that is the basis for your changed response.

The rule also provides that, within forty-five days of a data breach, you must notify the director in writing. This notification requirement may change based on directives or recommendations from law enforcement.

The rule amends Wash. Admin. Code § 208-620-510 to provide that some types of loans may not be covered by the integrated TILA-RESPA rule. Examples include: Reverse mortgages and HELOCS. Creditors originating these types of mortgages must continue to use, as applicable, the federal Good Faith Estimate, HUD-1, and Truth in Lending disclosures. Creditors are not prohibited from using the integrated TILA-RESPA disclosures. However, they cannot replace the required federal Good Faith Estimate, HUD-1, and Truth in Lending disclosures.

The rule provides that, within three business days (deleting," including Saturdays") of receipt of a residential mortgage loan application you must provide the borrower with specified disclosure about the interest rate, including the date of the rate lock and the date the rate lock agreement was provided to the borrower.

The requirement to notify the borrower of, if applicable, the index and a brief explanation of the type of index

used, the margin, the maximum interest rate, and the date of the first interest rate adjustment has been deleted.

The rule provides that, prior to closing, you must disclose payment of a rate lock as a cost in Block 2 of the federal good faith estimate or in "Loan Cost" on the loan estimate. At closing, you must disclose payment of a rate lock in section 800 "Items Payable" on a HUD-1 or in "Loan Cost" on the closing disclosure. You may rely on a broker's rate lock agreement if it complies with this subsection.

The rule amends Wash. Admin. Code § 208-620-520 to provide that licensees must maintain specified records for a minimum of three years, or the period of time required by federal law whichever is longer, after making the final entry on a loan at a licensed location.

New rule Wash. Admin. Code § 208-620-532, Records disposal, has been added.

The rule amends Wash. Admin. Code § 208-620-550 to provide that it is an "unfair or deceptive" act or practice to fail to provide the exact pay-off amount as of a certain date within seven (formerly, five) business days after being requested in writing to do so by a borrower of record or their authorized representative.

The rule adds that the following are also “unfair or deceptive” acts:

Making, in any manner, any false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan. An example is advertising a discounted rate without clearly and conspicuously disclosing in the advertisement the cost of the discount to the borrower and that the rate is discounted; or

Servicing a usurious loan.

Wash. Admin. Code § 208-620-555 has been amended to provide that the only third-party fees you may collect from the borrower before a loan is closed is the actual cost of the credit report and appraisal (adding, the actual cost of the credit report).

The rule adds that you must not collect a fee from the borrower for lowering the interest rate unless the interest rate is actually reduced.

You must be able to show a definitive mathematical relationship between discount points paid and the interest rate obtained via a rate sheet or pricing engine that was in effect when the interest rate was locked.

Any applicable program add-on fees must be disclosed as part of the discount points.

The rule adds new Wash. Admin. Code § 208-620-571, Information security program required by the federal Safeguards Rule implementing the Gramm-Leach-Bliley Act.

The rule adds new Wash. Admin. Code § 208-620-572, Consumer financial information privacy under the Gramm-Leach-Bliley Act (GLBA) and Regulation P.

New Wash. Admin. Code § 208-620-573 Notice to consumers of data breach, has been added.

The rule amends Wash. Admin. Code § 208-620-610 to provide that the director may collect an fee to investigate violations of the Consumer Loan Act. Licensees will be charged sixty-nine dollars and one cent per hour for the investigation.

The rule amends Wash. Admin. Code § 208-620-630 to provide that you must clearly and conspicuously disclose in an advertisement at a minimum, the cost of the discount to the borrower and that the rate is discounted. Not including that information is a violation of RCW 31.04.027(7).

Wash. Admin. Code § 208-620-710 has been amended to provide that you are not eligible for a loan originator license if you have been convicted of a gross

misdemeanor involving dishonesty or financial misconduct.

The rule provides that you must notify the director through amendment to the NMLS within ten business days of a change to your response to a disclosure question within NMLS. You must upload any document that is the basis for your changed response.

The rule amends Wash. Admin. Code § 208-620-900 to provide that, when servicing residential mortgage loans, you must notify the borrower within ten business days of any change to the escrow account, other than the changes brought about by the borrower's regularly scheduled payment, that will change the borrower's escrow payment amount. Examples of changes requiring notification include, but are not limited to, hazard insurance premiums, a reduction in the required reserve amount for the account, or a change in the property's tax assessment.

The rule provides that the obligation to assign an individual servicer representative with the information and authority to answer questions and resolve disputes and to act as a single point of contact for the homeowner during loss mitigation attaches when the borrower requests loss mitigation. This individual servicer representative must have the authority and ability to perform the following duties: (i) Explain loss mitigation options and requirements; (ii) Track documents submitted by the homeowner and documents provided to the homeowner;(iii) Inform the homeowner of the status of their loss mitigation process; (iv) Ensure the homeowner is considered for all loss mitigation options; and (v) Access individuals with the authority to delay or stop foreclosure proceedings.

The rule also provides that, if a loan payment forbearance is granted, you must provide the borrower with, at a minimum, a confirming letter of approval. The letter must contain the essential terms of the forbearance and must contain the name and contact information of specialist who is the borrower's primary or contact with the company.

ADOPTED RULE
Washington
Mortgage Broker Practices Act

Effective 4/30/2016, the rules that implement the Mortgage Broker Practices Act, Wash. Admin. Code §§ 208-660-006 et seq., have been amended.

The rule amends Wash. Admin. Code § 208-660-006 to provide that “advertising material" includes social media pages.

The rule provides that discount points are to be reflected on the good faith estimate or loan estimate and applicable settlement statement as a dollar amount.

The rule provides that "loan originator" or "mortgage loan originator" means a natural person who for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain:

• Takes a residential mortgage loan application (deleting, “for a mortgage broker”); or

• Offers or negotiates terms of a mortgage loan, including short sale transactions.

The rule adds that an individual "offers or negotiates terms of a residential mortgage loan for compensation or gain" if the individual: (a) Presents for consideration by a borrower or prospective borrower particular residential mortgage loan terms; or (b) Communicates directly or indirectly with a borrower, or prospective borrower for the purpose of reaching a mutual understanding about prospective residential mortgage loan terms.

Wash. Admin. Code § 208-660-105 has been amended to provide that residential mortgage loan modification services may include the collection of data for submission to another person (formerly, “entity”) performing

mortgage loan modification services or to a residential mortgage loan servicer.

The rule amends Wash. Admin. Code § 208-660-155 to delete the requirement that the most recent good faith estimate be signed by both the borrower and the mortgage broker.

The rule amends Wash. Admin. Code § 208-660-163 to provide that the department will consider whether an mortgage broker applicant has had a license application denied in another state.

The rule also amends Wash. Admin. Code § 208-660-300 to provide that a licensee may act as a loan originator and a real estate agent or with someone in the same real estate agency in the same transaction or for the same borrower in different transactions (adding, "or with someone in the same real estate agency").

The rule deletes the required disclosure to the borrower and refers, instead to the required disclosure language in RCW 19.146.0201(14).

The rule also provides that W-2 employee loan processors are not required to have a loan originator license provided they work under the supervision and instruction of a licensed (formerly, or exempt) mortgage loan originator (formerly, mortgage broker) and do not hold themselves out as able to conduct the activities of a licensed mortgage loan originator (formerly, mortgage broker), including the designated broker and do not hold themselves out as able to conduct the activities of a licensed mortgage broker or loan originator. Independent contractor loan processing companies (formerly, processors) must be licensed as a mortgage broker, have a designated broker, and have at least one licensed mortgage loan originator (who can be the designated broker). The W-2 employee loan processors are not then required to be licensed mortgage loan originators. Individual independent contractor loan processors must be licensed as mortgage (formerly, a broker, mortgage broker branch office, or) loan originators, be sponsored by a licensed mortgage broker, and be supervised by that licensee's licensed mortgage loan originator (including the designated broker).

The rule amends Wash. Admin. Code § 208-660-350 to provide that the investigation of an MLO application may include a review of whether you have had a license issued under the act or any similar state statute denied, suspended, restricted, or revoked.

Wash. Admin. Code § 208-660-400 has been amended to provide that, within forty-five days of a data breach, you must notify the director in writing.

The rule amends Wash. Admin. Code §§ 208-660-410 and -430 re: disclosures to comport with TRID.

The rule amends Wash. Admin. Code § 208-660-446 to include social media pages in provisions regarding specific contents in advertisements using the internet or any electronic form (including, but not limited to, text messages.

The rule provides that if the company uses a DBA on a home web page, the page must also contain the company's license name and license number.

The rule deletes the provision that if the company uses a DBA on a web page the web page must contain the main office license name, and if loan originators are named, their license numbers must closely follow the names, and the web page must contain a link to the NMLS consumer access web site page for the company.

The rule adds, re: social media pages or other online advertisements, that: (a) The company's license name and license number must be displayed on the page; (b) If the company uses a DBA, the company license name and license number must be displayed on the page along with the DBA name; (c) If a page is created by a loan originator, the company license name and license number, along with the loan originator's license number must be displayed on the page.

Wash. Admin. Code § 208-660-450 has been amended to provide that books and records that must be maintained include:

All written disclosures required by the act and federal laws and regulations, including those provided to consumers by the lender; and

Initial and final settlement statements, if applicable.

The rule adds that you must have written policies and procedures for the destruction of records, including electronic records, when the retention period ends. The destruction of records must be accomplished so that the information cannot be reconstructed or read. The destruction of consumer credit report information must also comply with the federal Disposal Rule at 16 C.F.R. 682.

The rule adds new Wash. Admin. Code § 208-660-460, Information security program required by the federal Safeguards Rule implementing the Gramm-Leach-Bliley Act.

New Wash. Admin. Code § 208-660-470, Consumer financial information privacy under the Gramm-Leach-Bliley Act (GLBA) and Regulation P, has also been added, as has new Wash. Admin. Code § 208-660-480 Notice to consumers of data breach, and new Wash. Admin. Code § 208-660-490 Business resumption plan

SALES AND WARRANTIES

CASE LAW

Condemnation – Recall petition

CASE NAME: *Gibson v. Kesterson*
DATE: *04/06/2016*
CITATION: *District Court of Appeal of Florida, First District. --- So.3d ---. 2016 WL 1336887*

This case concerns manufactured housing in a town where the mayor once banned Satan (and where Elvis filmed *Follow That Dream*).

After Commissioner Kesterson proposed adopting an ordinance relating to manufactured homes, a petition was circulated calling for his recall.

The ordinance would provide that:

1.) Any manufactured dwelling whose date of construction was 1999 or before would be subject to the following:

Provided said dwelling is damaged and in disrepair or otherwise uninhabitable and/or vacant for 120 days from the date of sited record shall be condemned and removed from the subject property within a period to be determined by order. No replacement of the dwelling with another manufactured dwelling shall be allowed.

2.) Any manufactured dwelling as described above that is damaged and/or requires repair to make it habitable will be subject to Paragraph 1 should the estimate for permitted repairs exceed $500.

Hereafter, these provisions will apply to any manufactured home that has reached its sixteenth year from date of manufacturer [sic].”

Because the trial court correctly ruled that the recall petition was legally insufficient, the appeals court held that the grant of injunctive relief and its order stopping the recall election should be affirmed.

TITLING AND PERFECTION

LEGISLATION

Kentucky

Continuation

2016 KY S 122. Enacted 4/1/2016. Effective 7/14/2016.

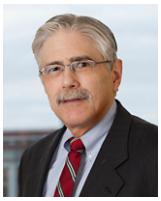
This bill amends Ky. Rev. Stat. Ann. § 186A.190 to provide that the filing of a continuation statement within the six (6) months preceding the expiration of the initial period of a notation's effectiveness extends the expiration date for 5 (formerly, 7) additional years, commencing on the day the notation would have expired in the absence of the filing. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial notation.

LEGISLATION
Kentucky
Perfection - Discharge

2016 KY H 352. Enacted 4/13/2016. Effective 7/14/2016.

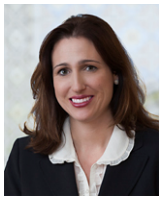
This bill amends Ky. Rev. Stat. Ann. § 186A.190 to provide that notation of the perfection and discharge of a security interest in any property for which has been issued a Kentucky certificate of title shall be made by the entry of information required into the Automated Vehicle Information System, and shall be deemed to have occurred upon the entry.

The bill amends Ky. Rev. Stat. Ann. § 186A.200 to provide that, with respect to a vehicle previously titled in the name of its debtor, the secured party shall, within 30 (formerly, 20) days after execution of the security agreement, obtain the current certificate of title in the name of the debtor, with no more than one (1) prior lien indicated thereon, and present to the county clerk the certificate of title, which the secured party shall have the right to obtain from the debtor, together with the title lien statement and the required fees in KRS 186A.190 to the county clerk.



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 Manufactured Housing Institute ("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.

Find out more about Marc here:
http://www.mcglinchey.com/Marc-J-Lifset



LAURA GRECO is of counsel in the consumer financial services, business law, and commercial litigation groups of the firm's Albany office. Laura represents manufactured housing lenders, banks, mortgage companies and other financial institutions in lawsuits involving all areas of consumer finance. Laura has experience dealing with claims that include federally regulated areas as the Truth in Lending Act, Real Estate Settlement Procedures Act, Fair Credit Reporting Act, Fair Debt Collection Practices Act, and others, as well as representing clients in state and federal actions concerning the foreclosure and servicing procedures of mortgage servicers and lenders.

Find out more about Laura here:
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