McGLINCHEY STAFFORD

MHI Manufactured Housing Institute

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

WELCOME!

February is the shortest month, and thank goodness! Although it is hard for this editor to believe, spring is just around the corner.

It has been a relatively quiet month on the manufactured housing front. In the bankruptcy realm, courts have rejected appraisers' attempts to add a monetary adjustment of the value of a manufactured home for costs of delivery, set up, and connection of the home.

Virginia has adopted a new process for exoneration of personal property, and HUD issued an update on the Manufactured Home Installation Program, including new Fast Facts about the Dispute Resolution Program. California has enacted an emergency rule relating to the Fee and Tax Waiver Program. Arkansas has amended its certificate of title law, as has South Dakota. Wyoming has also enacted an amendment to its titling law concerning surrender of title.

Finally, we have a report of what the Arkansas Manufactured Housing Association has been up to. Good work, guys!

IN THIS ISSUE

Contents

COMMUNITIES

CASE LAW

Foreclosure - Sales

CASE NAME: *Mobile Home Management Indiana, LLC v. Avon Village MHP, LLC*
DATE: *01/26/2017*
CITATION: *Court of Appeals of Indiana. Slip Copy (Table, Text in WESTLAW), Unpublished Disposition. 2017 WL 371392*

Avon Home Leasing, LLC ("Old Avon") owned mobile homes in a mobile home park also owned by Old Avon. In October 2010, a mortgage foreclosure action was filed against Old Avon, and a receiver was appointed. The receiver collected home rents and lot rents on the twenty Units that were the focus of this litigation. The Park's real estate (but not the twenty Units) was sold at sheriff's sale to Special Services Asset Management Company, which collected home rents and lot rents on the twenty Units. Old Avon did not pay taxes on the Units.

Special Services sold the Park to Avon Village MHP, LLC ("New Avon"), assigning to New Avon its interest in a security agreement in Old Avon's accounts with respect to the twenty Units. At the time of the purchase, Old Avon was delinquent in lot rent payments by over $14,000. That delinquency, which continued to increase, was assigned to New Avon as part of the purchase. After the sale, New Avon collected rents on all twenty Units and paid taxes on the Units.

New Avon reasonably believed that Old Avon had abandoned the twenty Units and took steps to acquire them through the statutory abandoned mobile home process. New Avon was unable to find the owners of 3 of the Units. Instead of allowing those Units to deteriorate or disposing of them without the protection of the statutory process, New Avon repaired and renovated them to protect the Park and the interests of the Units' owners. In May 2012, New Avon sent first notices via certified mail to Old Avon regarding the remaining seventeen Units. In June 2012, New Avon mailed second notices. Both notices were received and signed for by Old Avon. Advertisements for the auction were published twice in a local newspaper. New Avon did not receive any communication from Old Avon. An auction was conducted on July 9, 2012, and New Avon acquired all seventeen Units. After the auction, New Avon reasonably believed that it was the owner of the Units.

In June 2013, New Avon's principal informed the principal of Mobile Home Management Indiana, LLC, that he had completed the abandoned home process on the seventeen Units and claimed ownership. On July 15, 2013, MHMI purchased the twenty Units from Old Avon for a total of $14,285. In the purchase agreement, Old Avon represented that it had not had possession of the twenty Units since 2010 and was not aware of any claims against them.

After New Avon filed a complaint against MHMI the appeals court eventually held that New Avon had not complied with the notice statutes governing the abandoned mobile home process and MHMI was declared the owner of the seventeen Units at issue.

While the appeal in that case was pending, New Avon filed a complaint for unjust enrichment against MHMI to recover repair costs, insurance payments, and taxes on the three unauctioned Units. MHMI counterclaimed. The causes were consolidated.

The trial court concluded that MHMI was not a purchaser without notice of New Avon's claims, but New Avon's process was determined flawed and, as a result, MHMI was the owner of the 17 Units.

New Avon was and had been at all relevant times, the owner of the Park and was entitled to assess and charge lot rent for the occupation of its lots by mobile homes. MHMI was not entitled to assess speculative-repair costs

to the 17 Units or the cost to move and re-set the 17 Units.

New Avon was entitled to collect home rents on the 17 Units against the accrued and accruing lot rents pursuant to the Security Agreement it was assigned when it purchased the Park. Additionally, New Avon had statutory liens against the 17 Units due to the accrued but unpaid lot-rents.

Because MHMI knew the disputed ownership position it purchased, it would not be equitable to award it home rents which were collected prior to its date of purchase of the 17 Units, July 15, 2013. However, by virtue of its purchase of the 17 Units and New Avon's defective Abandoned Mobile Home Process Claim, MHMI was entitled to the actual value of the rents collected from the 17 Units by New Avon from July 15, 2013, to the present.

MHMI was not entitled to attorney's fees or pre-judgment interest.

It was equitable to award New Avon a set-off for repairs and taxes, as they were actually-incurred costs, undertaken with a belief of ownership, and which provided a substantial benefit to MHMI.

Because New Avon's set-offs exceeded the amount to which MHMI was entitled, the Court awarded MHMI $1.00 as a nominal judgment against New Avon.

The trial court's findings and conclusions regarding the other three units were substantially similar to those regarding the seventeen units.

At no time did New Avon have an ownership interest in the three Units, actual or believed. Despite not having an ownership interest in the three Units, New Avon expended funds and collected rents related to those Units as a measure of mitigation of damages, as its alternative was to do nothing, which would harm both the three Units and the Park.

There was no legal barrier preventing MHMI from collecting the three Units at any time after its purchase, and New Avon did not prevent or attempt to prevent MHMI from collecting the Units.

As the owner of the lots in the Park, New Avon was entitled to assess and charge lot rent for the occupation of its lots by mobile homes.

MHMI was initially entitled to $16,487.00 as disgorged home-rents collected by New Avon. However, New Avon was entitled to set-offs in the amount of $11,256.00 for repairs and taxes. Therefore, the Court awarded MHMI $5,321.00.

MHMI appealed the judgments in both causes. The appeals court affirmed, finding that the trial court did not abuse its discretion in not awarding MHMI relief under theories of tortious conversion, unjust enrichment, and constructive trust or by not awarding prejudgment interest to MHMI.

DEFAULT SERVICING

CASE LAW

Bankruptcy – Value of collateral

CASE NAME: *In re: DONALD RAY MOSES NYRA LOUISE MOSES, Debtors*
DATE: *01/31/2017*
CITATION: *United States Bankruptcy Court, E.D. Oklahoma. Slip Copy. 2017 WL 432692*

Debtors lived in a 2013 Cavco Manufactured Home on a lot they owned. On their bankruptcy Schedule A/B, they listed the value of the mobile home as $38,860, and they valued the lot at $9,000. They claimed both as exempt property. Creditor 21st Century Mortgage Corporation held a secured claim on the mobile home. Debtors listed the amount of the claim at $92,503.21, with the secured portion being $39,860 and the unsecured portion valued at $52,643.21. 21st Century filed a proof of claim for $94,643.93.

Debtor Donald Moses's assessment was that the home was not in good condition and had more than average wear and tear. Based upon his experience of living in the home, he would expect to pay $55,000 for the home in its current condition. He presented no evidence regarding repair costs.

Creditor 21st Mortgage offered a formal appraisal by Charlotte Brady, certified by National Appraisal Services to appraise manufactured homes, valuing the home at $72,600.

Brady walked through the home with Mrs. Moses who shared her concerns about certain areas of the home. Brady also took measurements and photos of the home. Brady assessed the home's condition as very good. Her appraisal was based upon values from the NADA Manufactured Housing Appraisal Guide. She combined these values with her physical inspection of the home to arrive at her appraisal of current value and added estimated costs for delivery and set-up of the home of $8,825, to arrive at a replacement value of $81,425.

The Court noted that, pursuant to § 506(a)(2), the value of personal property securing an allowed claim is determined based on the replacement value of the property as of the date the petition is filed without deducting for costs of sale and marketing, and found that Brady's use of the NADA Guide for determining value pursuant to § 506(a)(2) was appropriate.

The Court also found that, although it was possible that the home could be classified as falling into the "fair" condition category, Moses provided only minimal information regarding the problems he observed and did not dispute the specific information contained in Brady's appraisal. Her assessment that the home should be valued as "good" rather than "fair" was not challenged with any specific information nor an alternate valuation by Moses. Brady's appraisal did take into account repairs of the items that Moses also identified. He did not provide any evidence to rebut or challenge the values or costs of repairs. The Court found that Brady's appraisal values were well-documented and supported, and adopted her replacement value by cost approach of $72,600. The Court declined to include the adjustments of $8,825 for delivery and set-up of the home. Brady offered no information as to how she arrived at this amount. Further, the Court found no case law supporting the view that retail value includes these costs.

CASE LAW

Bankruptcy – Value of collateral

CASE NAME: *IN RE: Shane Stewart Allen Debtor*
DATE: *02/17/2017*
CITATION: *United States Bankruptcy Court, W.D. Louisiana. Slip Copy. 2017 WL 685568*

Debtor Shane Allen resided in a mobile home. His ownership interest was limited to the mobile home; he did not own the real estate on which the mobile home sat. 21st Century held a claim against the mobile home. The debtor filed Chapter 13 and proposed a plan which valued the mobile home at $20,000.00, and estimated 21st Century's secured claim at $51,913.00. 21st Century objected to the debtor's valuation of the mobile home.

The Court discounted the testimony of the debtor's expert witness, Mr. Stokes, based on his general inexperience, his lack of any work experience within the mobile home industry and his lack of any certification as to mobile home valuations. Still further, the experience Stokes did have in valuing mobile homes of this type was limited to providing valuations for debtors represented by the same law firm as the debtor in this case. Those valuations were all in the context of Chapter 13 cases, with debtors who are seeking to cram down their mobile home mortgages. Stokes testified that the market value of the subject property was $30,000.00. In Louisiana, real estate sales are public records and an appraiser can easily ascertain comparable sales. Mr. Stokes testified there are no such records for mobile home sales that do not include an immovable property (real estate) interest.

The Court also found a lack of evidence or testimony with respect to how he calculated his cost multiplier (.89) and physical depreciation ($19,362.00) in his appraisal. These factors were the main reasons for the difference in the debtor's valuation of $30,000.00 and the creditor's valuation of $35,000.00.

21st Century's expert witness was Hugh Harvey, who was board certified by the NADA for FHA/VA/Conventional Loan Manufacturing Housing Appraisals and has a work history of over 40 years in the mobile home industry. He has conducted over 1,300 mobile home appraisals and testified in over 250 bankruptcy cases. The Court found Harvey's testimony credible. Harvey valued the mobile home at a base value of $35,000.00 using a NADA Guide Used Value Report for mobile homes. He also made a positive adjustment of $7,743.00 for delivery and setup, for a total value of $42,743.00. The Court found Harvey's methodology for valuation of used mobile homes by use of the NADA guide with adjustments to be factually and procedurally sound. With the exceptions noted herein, the Court adopts Mr. Harvey's valuation using the NADA Guide Used Value Report for mobile homes.

The Court sets the value of the mobile home in this case at $34,982.00. The creditor's expert witness testified was the retail value of the mobile home and what the mobile home would sell for in an arm's length transaction, “as is” and “where is.” In other words, the amount the mobile home would sell for in its current condition and in its current fixed location. However, the Court rejected the creditor's appraisal request for an adjustment to the mobile home's value for delivery, setup and connection fees of $7,743.00.

CASE LAW

Electronic funds transfer

CASE NAME: *Blatt v. Capital One Auto Finance, Inc.*
DATE: *02/17/2017*
CITATION: *United States District Court, M.D. Tennessee, Nashville Division. Slip Copy. 2017 WL 660677*

Blatt financed his vehicle through the execution of a Retail Installment Sale Contract, which was assigned to COAF. Blatt called COAF on May 6, 2014, and (1) authorized COAF to make a one-time withdrawal from his checking account to cover a missed payment; and (2) requested that he be enrolled in DirectPay—COAF's monthly automatic payment system. To complete Blatt's second request, he was transferred to the Interactive Voice Response (IVR) system, where Blatt input his loan account number as well as the last four digits of his Social Security Number. After Blatt did this, a message regarding the terms of DirectPay played.

After hearing this message, Blatt pressed “1” on his phone to accept the terms. On May 7, 2014, COAF mailed Blatt a letter confirming the one-time debit from his checking account to make his missed payment. On May 8, 2014, COAF mailed Blatt a letter confirming his enrollment in DirectPay with the amount of the payments to COAF, the recurring schedule of the payments, the date on which the first withdrawal would take place, the date on which Blatt agreed to the terms via the IVR system, and information on how to cancel or change his DirectPay enrollment.

Blatt sued, claiming that COAF violated the Electronic Funds Transfer Act (EFTA), 15 U.S.C. § 1693 et seq, in the course of enrolling Blatt in DirectPay because: (1) COAF did not obtain his authorization to the recurring payments in writing; and (2) the May 8, 2014 letter COAF mailed to Blatt was insufficient to meet the EFTA's requirement that COAF mail a copy of the authorization to him.

The Court found that the EFTA is implemented by Regulation E, 12 C.F.R. 1005 et seq, which allows for the consumer's written authorization to be provided electronically, as long as the electronic authorization complies with the Electronic Signatures in Global and National Commerce Act ("E–SIGN Act"). The E–SIGN Act mandates that a signature "may not be denied legal effect ... solely because it is in electronic form[.]" Furthermore, it mandates that a "contract relating to such transaction may not be denied legal effect ... solely because an electronic signature or electronic record was used in its formation."

The Court also found that two business days is an appropriate amount of time to provide a copy of the authorization when looking at both the plain language of the EFTA as well as other notice requirements in the statute, and contemporaneousness is not required.

Finally, the Court found that the terms contained in the letter mailed to Blatt were sufficient to meet the standards of 15 U.S.C. § 1639e(a), and the letter's failure to recite the exact words used in the IVR system was immaterial. The CFPB Compliance Bulletin published in November 2015 states that "[t]wo of the most significant terms of an authorization are the timing and amount of the recurring transfers from the consumer's account."

CASE LAW

Usury – Choice of law

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CASE NAME: *Madden v. Midland Funding, LLC*
DATE: *02/27/2017*
CITATION: *Court of Appeals of Iowa. Slip Copy. 2016 WL 7403730*

Plaintiff opened a credit card account with Bank of America. The Cardholder Agreement provided that it was "governed by applicable Arizona and federal law."

Plaintiff's August 14, 2006 account statement was sent to her address in White Plains, New York, and disclosed an annual percentage rate of 32.24%. It stated that payment was to be made online or sent to an address in Newark, New Jersey, and that billing disputes were to be sent to an address in Norfolk, Virginia. The account statement also included a Change in Terms which replaced the Cardholder Agreement and advised that "your Bank of America credit card account will be issued and administered by FIA Card Services, N.A." The Change in Terms provided that "The Agreement is made in Delaware and we extend credit to you from Delaware. This Agreement is governed by the laws of the State of Delaware (without regard to its conflict of laws principles) and by any applicable federal laws." FIA was an active national bank.

FIA sold, transferred, and set over unto Midland Funding, LLC Plaintiff's outstanding debt. Midland has its principal place of business in San Diego, California.

Midland sued Plaintiff in the City Court of the City of White Plains, Westchester County, New York, alleging that Plaintiff lived in White Plains, and that its action arose out of transactions in Westchester County, New York. That case has since been dismissed.

Plaintiff filed suit, asserting violations of: (1) the FDCPA, based on Defendants' attempt to collect interest on her debt above the rate permitted by New York's usury laws; (2) New York General Business Law ("GBL") § 349, based on Defendants' representations that they were entitled to collect interest at a usurious rate; and (3) New York's civil and criminal usury laws, entitling Plaintiff to a declaration that her debts were void and to disgorgement.

The trial court entered judgment for Defendants. The Second Circuit reversed and remanded, holding that the NBA did not preempt Madden's state law usury claims, but leaving it to the trial court "to address in the first instance whether the Delaware choice-of-law clause precludes Madden's claims."

Based on New York State case law, the Court found that the New York Court of Appeals, were it to face this

situation, would hold that the criminal usury cap limits interest charged on debts to 25% annually, even for defaulted debts. The Court also found that federal court decisions supported that position. Given, however, that both parties agreed that the civil usury cap did not apply to Plaintiff's defaulted obligation, and that the criminal usury law does not provide a private right of action. The Court granted summary judgment in Defendants' favor on Plaintiff's usury claims under N.Y. Gen. Oblig. Law § 5–501 and N.Y. Penal Law § 190.40.

Further, even assuming that a reasonable relationship existed between the parties, the transaction, and Delaware, the Court found that to apply Delaware usury law would violate a fundamental public policy of the state of New York, and, therefore, applied New York law to Plaintiff's claims.

Because New York law applied, and Plaintiff predicated her FDCPA and GBL claims on a violation of New York's criminal usury cap, Defendants' motion was denied as to those claims.

Plaintiff's motion for class certification, as modified, was granted.

LEGISLATION

Virginia

Nonexoneration of debts

2016 VA S 1176. Enacted 2/21/2017. Effective 7/1/2017.

This statute provides a procedure by which a personal representative of a decedent's estate may notify a creditor of a debt on certain property in the decedent's estate that such property passes without the right of exoneration, i.e., the right that the debt, typically in the form of a lien, is paid from the estate. The law provides the method by which such notice shall be sent.

If the statutory procedure is used, the creditor may file a claim for such debt with the commissioner of accounts, and if the creditor does not timely file such claim, the personal representative shall be liable for the debt up to an amount not exceeding the assets of the decedent remaining in possession of the personal representative and available for application to the debt.

Specifically, the law amends VA. Stat. Ann. § 64.2-531. The law affects specific debts of the decedent, consisting of (i) real or personal property that is the subject of a specific devise or bequest in the will or (ii) real property subject to a transfer on death deed passes, subject to any mortgage, pledge, security interest, or other lien existing at the date of death of the testator.

The creditor holding such debt may file a claim for such debt with the commissioner of accounts pursuant to Section 64.2-552 on or before the later of one year after the qualification of the personal representative of the decedent's estate or six months after the personal representative gives such written notice to the creditor. Once the personal representative has given notice to the creditor as provided here, unless the creditor files a timely claim against the estate as set forth in this subsection, the liability of a personal representative or his surety for such debt shall not exceed the assets of the decedent remaining in the possession of the personal representative and available for application to the debt pursuant to Section 64.2-528 at the time the creditor presents a demand for payment of such debt to the personal representative.

In the event that any such claim is timely filed with the commissioner of accounts, the personal representative shall give the specific beneficiary receiving such real or personal property written notice, within 90 days after such claim is filed, to obtain from the creditor the release of the estate from such claim.

If the estate has not been released from such claim after the later of 180 days from such notice or one year from

qualification, the personal representative may (a) sell the real or personal property that is the subject of a specific devise or bequest and that is also subject to the claim, (b) apply the proceeds of sale to the satisfaction of the claim, and (c) distribute any excess proceeds from such sale of the specific beneficiary of such property. If the proceeds of such sale are insufficient to satisfy the debt in full, the deficiency shall remain a debt of the estate to be satisfied from the other assets of the estate in accordance with applicable law. If such real property is subject to a transfer on death deed and is also subject to the claim, the personal representative may proceed as provided in Section 64.2-634 to enforce the liability for such claim against such property.

Nothing in the new section shall affect the priority of a secured debt with respect to the collateral securing such debt.

INSTALLATION

NEWSLETTER
HUD
March 2017, Issue 12

Includes:

Update on Manufactured Home Installation Program -

There are now over 330 HUD Licensed Installers. To date, monitoring inspections have been performed at 15 locations throughout Connecticut, Maryland, Massachusetts, Nebraska, New Jersey, South Dakota, and Vermont. As a result of these inspections, installation updates were required for 121 homes.

Among the most common discoveries were improper grading around the home, improper cap blocks, tie downs that exceed 60 degrees, and lack of approved alternative foundation designs.

HUD intends to release an Interpretative Bulletin to provide guidance on proper foundation design and installation in freezing climates.

In 2017, HUD will increase monitoring inspection efforts throughout HUD-administered states. From March to August, HUD-approved monitoring inspectors will visit Illinois, Maryland, Montana, Nebraska, New Jersey, South Dakota, and Wyoming. Following an inspection, the retailer, installer, and/or inspector may need to provide an action plan for any aspects not meeting HUD's Model Installation Standards or the manufacturer's installation instructions.

2017 will also see a significant effort to obtain compliance with reporting requirements throughout all HUD-administered states. For retailers, this means filling out the HUD 305 and 306 forms to track the sale and installation of the home, in addition to procuring a copy of the completed HUD 309 form and ensuring all forms are submitted to HUD via SEBA.

For installers, this means ensuring the HUD 309 form is filled out after the completed installation (with the signature of a qualified inspector), and providing a copy to all applicable parties. HUD and SEBA are always available to offer guidance on these requirements and encourage anyone who needs assistance to reach out.

Two Fast Facts about the Manufactured Home Dispute Resolution Program -

Top Five Alleged Defects:

Floors, Interior Walls, Belly board/Underbody, Fixtures, and Windows

The DRP tracks data on defects for each dispute. Some specific examples of defects include unlevel flooring or sinking floors, drywall cracking on interior walls, holes in the belly board, improperly installed can lights, and windows that don't close or seal properly.

Average Alleged Defects per Dispute: 5.

Since mediating the first dispute in March 2015, it is evident that each dispute is unique and presents different challenges. The range of alleged defects varies significantly. Some cases have only one alleged defect, however, other cases have had as many as 11 alleged defects. On average, there are five alleged defects per dispute.

LICENSING

ADOPTED RULE
Wyoming
Consumer credit

Effective 2/22/2017, this rule amends rules of the Wyoming Department of Audit/Division of Banking.

Chapter 1, Organization, Licensing, Records, Insurance Refunds, §2, has been amended to define "consumer" to mean a cardholder or a natural person to whom consumer credit is offered or extended. Unless the context indicates otherwise, credit shall be construed to mean "consumer credit," loan to mean "consumer loan," lease to mean "consumer lease," and transaction to mean "consumer credit transaction."

Formerly, the definition included the provision that, for purposes of rescission under Reg. Z Sections 226.15 and 226.23 the term also includes a natural person in whose principal dwelling a security interest is or will be retained or acquired, if that person's ownership interest in the dwelling is or will be subject to the security interest.

The rule amends § 4 (was § 5), Application/Licensing, to provide license applications for supervised lenders, pawnbrokers, post-dated check cashers and sales finance companies must be filed through NMLS and include a $300 (formerly, $150) processing fee for the first license (principal license) for each license type, plus a $50 (formerly, $25) license fee for each license obtained.

The rule amends § 6 (was § 7), Modification, to require a $50 (formerly, $25) fee for any licensee who wishes to move his office to another location.

Section 7 (was §8), Annual Renewal, has been amended to increase the license renewal fee to $50 (formerly, $25), plus any fees assessed by the registry.

Section 9, Insurance Refunds, has been added to provide that, if insurance terminates prior to the end of the term for which it was written because of prepayment in full of the consumer credit transaction,

(i) And if the contract is held by the original creditor he shall make a prompt refund of unearned premium directly to the debtor, or

(ii) If the contract has been assigned, the assignee shall make a prompt refund of the unearned premium directly to the debtor, or send a notice in substantially the form provided in the regulation to the original creditor via U.S. mail with a copy to the consumer and retain a copy in its files.

TAXATION

EMERGENCY RULE
California
Fee and Tax Waiver Program

Effective 1/23/2017, this rule adopts Cal. Code Regs. tit. 25, §§ 5535, 5535.5, 5536, 5536.5.

A Certificate of Compliance must be transmitted to the Office of Administrative Law by 7/24/2017 or emergency language will be repealed by operation of law on the following day.

This emergency rule establishes rules to allow owners of manufactured homes/mobilehomes to register the home into the current homeowners' name(s) and participate in the Fee and Tax Waiver Program.

The rule provides that, on or before December 31, 2019, a person or entity who asserts ownership of a manufactured home or mobilehome previously registered in California, as a result of a purchase or transfer of that home, but who has not registered that home with the Department, may apply for registration of his or her interest in that home in a manner consistent with this Article, the Fee and Tax Waiver Program, and upon satisfaction of the requirements, shall be eligible for relief through a waiver of a portion of the Department fees and penalties outstanding on that home or waive all or a portion of local property taxes and late fees due on that home.

Section 5535.5 provides that if the manufactured home or mobilehome is subject to annual renewal fees, including the annual registration fee, the in-lieu tax fee or vehicle license fee, and the Mobilehome Park Rehabilitation and Purchase Fund fee, the applicant shall comply with this Article's registration and Fee and Tax Waiver Program requirements except for Section 5536, including completion of an application form.

Section 5536 provides that if the manufactured home or mobilehome is subject to local property taxation, the applicant shall comply with the requirements of the registration and Fee and Tax Waiver Program as required by this Article except for Section 5535.5, including completion of an application form.

The Article is repealed on December 31, 2020, unless a law or regulation promulgated prior to or on that date removes or amends this section or the expiration dates.

TITLING AND PERFECTION

CASE LAW

Foreclosure – Personal property

CASE NAME: *Bowling v. Appalachian Federal Credit Union*
DATE: *02/03/2017*
CITATION: *Court of Appeals of Kentucky. --- S.W.3d ---. 2017 WL 461258*

The Appalachian Federal Credit Union filed a Complaint for Foreclosure against the Bowlings, alleging that the Bowlings executed a promissory note and granted the Credit Union a mortgage upon three acres of real property. Additionally, the Credit Union alleged that the Bowlings executed a second promissory note and also granted the Credit Union a second mortgage upon the same three acres. The circuit court found that the Bowlings had defaulted upon both promissory notes and that a valid mortgage existed upon the Bowlings' three acres of real property. The circuit court ordered the three acres of real property sold by the master commissioner. The summary judgment and order of sale made no reference to the Bowlings' mobile home, located on the property.

The three acres of real property were sold to the highest bidder (the Credit Union). The Bowlings filed an objection to the sale, contending that the mobile home located on their real property was not subject to the Credit Union's mortgage lien. The circuit court confirmed the sale and ordered the master commissioner to convey by deed the subject real property to the Credit Union. The circuit court also instructed the master commissioner to transfer the Bowlings' mobile home to the Credit Union. The Bowlings appealed.

The appeals court found that, in its order confirming the sale, for the first time in the case, the circuit court specifically referenced the Bowlings' manufactured home and further recognized that it had a certificate of title

and ordered the master commissioner "to execute an application for duplicate title." Thus, it was clear that a certificate of title existed upon the Bowlings' manufactured home. As a result, the only available method to perfect a security interest upon the Bowlings' mobile home was by notation on the certificate of title as provided by KRS 186A.190. There was nothing in the record that the Credit Union either created, attached or perfected a security interest in the Bowlings' manufactured home by notation on its title; nor was the manufactured home converted to real estate pursuant to KRS 186A.297.

Accordingly, The Court concluded that the Credit Union's mortgages upon the three acres of real property were insufficient to concomitantly place a lien upon the manufactured home, as it was personal property and further, was not referenced in either of the mortgages or in the foreclosure complaint. A manufactured home is not a fixture to real estate in Kentucky. The Credit Union failed to properly create or perfect its lien claim against the manufactured home in accordance with KRS 186A.190.

Reversed and remanded.

LEGISLATION

Arkansas

Certificate of title

2017 AR S 277. Enacted 3/6/2017. Effective 8/18/2017 (projected).

This bill amends Ark. Code Ann. § 27-14-1602 by clarifying that a manufactured/mobile home must be (previously permissive) registered with the Office of Motor Vehicles in order to obtain a certificate of title unless the manufactured/mobile home has completed the conversion procedure pursuant to Ark. Code Ann. § 27-14-1603 or the manufactured/mobile home is held for sale or resale by a licensed retailer, financial institution or other holder in due course.

LEGISLATION

South Dakota

Duplicate certificates of title

2017 SD H 1059. Enacted 3/6/2017. Effective 7/1/2017.

This bill provides for the perfection of liens upon application for duplicate certificates of title.

The bill amends S.D. Codified Laws § 32-3A-25 to provide that the application for issuance of a certificate of title, a transfer of title, or a corrected certificate of title shall include information on any lien to be noted on the certificate of title as evidenced by a copy of the security agreement.

The bill also amends S.D. Codified Laws § 32-3-29 to provide that, in the case of lost certificates of title, duplicates may be issued if the loss is accounted for to the satisfaction of the secretary. Any lien to be noted on a certificate of title shall be evidenced by a copy of the security interest when a person applies for a duplicate certificate of title.

And the bill amends S.D. Codified Laws § 32-3-41, to provide that any security interest, mechanic's lien, or similar instrument other than a financing statement covering a motor vehicle, trailer, or semitrailer, or any vehicle required to be titled under the provisions of this chapter, is valid against the creditors of the debtor, whether armed with process or not, and subsequent purchasers and other lien holders or claimants, but otherwise is not valid against them if notation of the lien has been made by the seller, buyer, owner, holder of the instrument, or an agent of the secretary on the manufacturer's statement of origin or the manufacturer's certificate of origin. In the case of a certificate of title, if a notation of the lien has been made by the secretary, an agent of the secretary, or a county treasurer on the face

of the certificate of title, or if notation of the lien has been made by the seller, buyer, owner, holder of the instrument, or agent of the secretary on the reverse of the certificate of title, the lien is valid against the creditors of the debtor, whether armed with process or not, and subsequent purchasers and other lien holders or claimants, but otherwise is not valid against them.

LEGISLATION

Wyoming

Title surrender

2017 WY H 56. Enacted 3/3/2017. Effective 7/1/2017.

This bill amends existing the Motor Vehicle Code relating to surrender of an MSO/title when a home is installed on permanent foundation, Wyo. Stat. Ann. § 31-2-502(b), by including an additional step requiring the recording of a document issued by the county clerk certifying the cancellation of certificate of title in the office of the real estate records where the home is located. The bill also adds the procedure for the surrender of the MSO/title when it is unavailable.

ZONING

MEMORANDUM

Arkansas Manufactured Housing Association

Trailer-Banishment Ordinance

In Arkansas, the past 20 years have arguably seen a significant improvement in local governmental acceptance of manufactured housing. This is due in no small part to the efforts of the Arkansas Manufactured Housing Association ("AMHA") and its individual members, led by J.D. Harper, Executive Director. Educational efforts have helped address manufactured housing myths.

Equally important, the AMHA has not hesitated to oppose discriminatory municipal laws (zoning or otherwise). A key tool has been the use of applicable Arkansas or federal legislation that prevents local discrimination against manufactured housing. Despite these efforts, some Arkansas municipalities still search for ways to reduce or eliminate the ability of their residents to choose manufactured housing.

The most recent example is a Trailer-Banishment Ordinance ("Ordinance") enacted by the McCrory, Arkansas City Council ("McCrory"). The Ordinance proposed to ban mobile homes failing to meet a dollar value test. The AMHA carefully tracked both the enactment of the McCrory Ordinance and was supportive of a subsequent legal challenge by a nonprofit national organization.

The attached memo, courtesy of the AMHA describes this litigation.

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ABOUT MHI:

MHI is the only national trade organization representing all segments of the factory-built housing industry. MHI members include home builders, lenders, home retailers, community owners and managers, suppliers and 50-affiliated state organizations.

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A leader in the manufactured housing and mortgage lending industries, McGlinchey Stafford represents 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.