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!

The University of North Carolina may have won the NCAA National Championship, but when it comes to legislation impacting manufactured housing, the state houses of Virginia and Utah were in a battle to the very end to win page space in the March Manufactured Housing Law Update. Virginia narrowly beat out Utah with a final score of 9 to 7. If you reside or do business in either of the states you have lots of reading ahead of you, but you can take comfort in knowing your legislature is very efficient. Utah's updates include bills relating to rental applications, leases, deficient conditions, judgment interest, unlawful detainer, and sales and use tax. Virginia's updates include bills relating to unlawful detainer, park model RVs, assistance animals, submetering, building code violations, uncorrected violations, water and sewer fees, and real estate taxation.

Other states with service animal-related legislation include Arkansas and Wyoming. In addition, there was titling legislation passed in several states, including Arkansas, Kentucky and North Dakota.

Enjoy this update and look for our April update next month.

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ARBITRATION

CASE LAW

Arbitration

CASE NAME: *CMH Homes, Inc. v. Bob's Home Services, LLC*
DATE: *02/23/2017*
CITATION: *United States District Court, S.D. West Virginia, Charleston Division. Slip Copy. 2017 WL 722602*

The defendants, Bob's Home Service, LLC and Robert Southworth, entered into an Independent Contractor Application and Agreement with the plaintiff, CMH Homes, Inc., where the defendants agreed to construct CMH's manufactured homes for purchasers. According to the Agreement, the parties were to submit all disputes to binding arbitration, and, further, the defendants were to defend and indemnify CMH should CMH be sued for the defendants' actions or negligence.

Two purchasers sued CMH for improper set up of their manufactured home and were awarded a judgment. CMH filed an arbitration claim against the defendants seeking recovery of that judgment and attorney's fees associated with its litigation of the claim, in accordance with the defense and indemnity provision of the Agreement. CMH also sought recovery of attorney's fees in bringing the arbitration. The arbitrator awarded CMH $1,165,289.20 jointly and severally against the defendants, and another $412,088.36 for attorney's fees and expenses.

CMH filed a Petition to Confirm Arbitration Award and for Entry of Judgment. The defendants failed to file any response or challenge to CMH's claim. The Clerk of the Court entered an Order of Default against the defendants. CMH filed a Motion for Entry of Default Judgment, requesting that the Court confirm the arbitration award and seeking post-judgment interest. The defendants did not respond to the Motions.

The Court found that CMH established that there was a valid contract between the parties requiring arbitration of "any conflicts arising under this agreement" and that its demand for arbitration arose from the defendants' breach of the indemnity and defense provision of the Agreement. The Court was therefore satisfied that the claims resolved at arbitration were within the scope of the parties' Agreement. Furthermore, although the defendants were served in the case, the defendants had failed to answer CMH's Petition or otherwise make a showing of any grounds for vacating the arbitration award. Accordingly, the Court granted the Motion for Default Judgment and the Petition to Confirm Arbitration Award and confirmed the arbitrator's award, plus interest.

COMMUNITIES

CASE LAW

New Homes - Permits

CASE NAME: *Parkview Homes, LLC v. City of Lexington*
DATE: *02/27/2017*
CITATION: *United States District Court, D. Minnesota. Slip Copy. 2017 WL 758573*

Parkview Homes, LLC owns and operates a manufactured home community located in the City of Lexington, MN. Parkview hoped to add new manufactured homes to the Community. The City must first approve permits for the siting of those homes.

Parkview proposed adding twenty-eight new manufactured homes to the Community in the summer of 2014. The City advised that the homes did not meet the building code's minimum square footage and width requirements, and did not approve the requested permits.

In October of 2014, Parkview provided the building inspector with requested specifications about the proposed homes and the City expressed concerns about

infrastructure issues in the Community, in particular, the water system, and threatened condemnation if Parkview did not provide it with certain "planning and performance assurances."

Parkview again submitted permitting applications for twenty new manufactured homes in July of 2015. The City advised that it would not approve the applications until Parkview satisfied six requirements: 1) a "comprehensive plan" of the "proposed rehabilitation of the park," including information on lot setbacks and boundaries, construction and utility plans, storm water compliance, disability accessibility, and sewer discharge data; 2) removal of structures or units located within the municipal right of way; 3) test results on the Community's water delivery and sewer systems, as well as data on the improvements that Parkview made to the water delivery system; 4) identification of abandoned structures, units, and lots; 5) disclosure of any existing units that were used for business purposes; and 6) discontinuation of the use and occupation of a particular home that was previously cited for Code violations, and removal of that unit.

Parkview filed suit seeking a declaratory judgment that federal law preempted the building code. Parkview also asserted a claim under 42 U.S.C. § 1983, alleging that the City "impermissibly attempted to interfere and actually interfered" with Parkview's property interests. Although not specifically stated, Parkview also alleged that the City's attempts to enforce the building code would violate Minn. Stat. § 462.357 by altering the Community's existing density.

The Court found that the preemptive reach of the National Manufactured Housing Construction and Safety Standards Act, 42 U.S.C. § 5403(d), is limited to standards and requirements for manufactured homes related to consumer protection. As a result, local ordinances that do not address consumer protection are not preempted.

The only specific Code provisions that Parkview identified as allegedly preempted by § 5403(d) were those setting minimum width and square footage requirements for manufactured homes. However, these Code provisions were not aimed at consumer protection and were instead more akin to aesthetic restrictions and were therefore not preempted by 42 U.S.C. § 5403(d).

Similarly, none of the City's other requirements that Parkview must meet before it grants the permitting applications primarily concerned the location and use of the Community's existing units, as well as the Community's water supply system. They did not obviously concern the various potential hazards associated with manufactured housing. Thus, Parkview's preemption claim failed as a matter of law.

Since Parkview admitted that any due process claim it had was based on state—not federal—law, Parkview's § 1983 claim failed as a matter of law and the Court declined to exercise supplemental jurisdiction over Parkview's remaining state law claims.

CASE LAW

Discrimination - Disability

CASE NAME: *Moore v. Equity Residential Management, L.L.C.*
DATE: *03/07/2017*
CITATION: *United States District Court, N.D. California. Slip Copy 2017 WL 897391*

Defendant owned and operated a building that contained at least five dwelling units, and was marketed as a "Mobility Impaired Living Enhancement Property." Plaintiffs Leroy Moore, Dominika Bednarska, Perlita Payne, Brett Estes, and AnnaMarie Hara "are or were" tenants living on the Property. Plaintiffs alleged they at all relevant times were "'handicapped persons' or closely associated with a 'handicapped person[' ... or] closely related to a person with a disability...." The Complaint did not describe how Moore was disabled or associated

with a disabled person. It alleged Bednarska was disabled but did not describe her disability or its impact, and that Payne was married to Bednarska. It also alleged Estes was a quadriplegic, and that Hara's husband was "also disabled and confined to a wheelchair."

The Complaint asserted federal claims under the Americans with Disabilities Act of 1990 (the "ADA"), the Rehabilitation Act of 1973, and the Federal Fair Housing Act (the "FHA"). Plaintiffs also asserted related state law claims.

The Court found that, while Plaintiffs may not have had to identify their "particular diagnoses," they did need to include factual allegations sufficient to state they had mobility disabilities in order to state a disability-related claim. Accordingly, the Court dismissed each of Hara's, Moore's, and Bednarska's claims on this ground.

Payne conceded she did not have a mobility disability, but argued she had "associational standing"—i.e., by virtue of her marriage to Bednarska—to pursue the claims asserted in the Complaint. The Court did not need to reach this issue because it found Bednarska insufficiently pled she was disabled.

Because the Complaint did not allege the Property was a place of public accommodation, the Court dismissed the ADA claim on that ground, with leave to amend. According to the Court, when amending the Complaint, Plaintiffs should note that "public" portions of apartment complexes that are not commercial spaces are not necessarily places of public accommodation.

The Court also found that Plaintiffs alleged "Defendants were recipients of federal funding within the meaning of the Rehabilitation Act" and also suggested "federal laws regulating business which accept federal funds as payment for rent" apply to the Property and Defendant. This was sufficient to survive a motion to dismiss.

The Court dismissed Plaintiffs' FHA claim on the issue of reasonable accommodation, because a plaintiff must actually request an accommodation and be refused in order to bring such a claim; something Plaintiffs failed to do.

However, because the Complaint alleged separate continuing violations, not continuing effects of a single, original construction defect, the Court denied Defendant's Motion to Dismiss to the extent it was based on Plaintiffs' failure to file their FHA claim within two years of the Property's occupancy.

Further, the Court dismissed Plaintiffs' state law claims under the California Fair Employment and Housing Act and California Disabled Persons Act because Plaintiffs did not allege facts establishing each element of these claims, such as what protections of FEHA or CDPA they allege were breached by Defendant's conduct, or how Defendant's conduct violated those protections as to each Plaintiff.

Plaintiff's Unruh Civil Rights Act claim was more specifically pleaded, but it nonetheless failed to the extent it relied on the ADA claim the Court had dismissed.

CASE LAW

Rent Control

CASE NAME: *Rampersad v. City of Thousand Oaks*
DATE: *03/13/2017*
CITATION: *Court of Appeal, Second District, Division 6, California. Not Reported in Cal.Rptr.3d. 2017 WL 959200*

In 2011, the City of Thousand Oaks adopted Ordinance No. 1559–NS, a mobile home rent control measure to protect tenants from excessive rent increases and provide mobile home park owners a fair and reasonable return on their investments.

Pursuant to 1559–NS, City approved a $191.95 per month fair-return rent increase for the Ranch Mobile Home Park (Ranch), to be phased in over seven years.

Ranch accepted 1559–NS as a valid rent control measure, but Ranch tenants sued for declaratory and injunctive relief, alleging that "City undid the 1974 permit conditions on which the Ranch trailer park development permit was approved, no longer reserving the park for low income seniors, and eliminating the restrictions on rent increases that the City and owner agreed upon and that governed the park for more than three decades." It was alleged that 1559–NS curtailed the rights of Ranch residents to realize their investment-backed expectations, and constituted an unlawful taking of property under both the United States and California Constitutions.

The trial court sustained, without leave to amend, City's demurrer on the declaratory and injunctive relief causes of action on the ground that the entire action was barred by a 90–day statute of limitations. The trial court also granted City's summary judgment motion on FHA and state takings claims, finding no material triable facts of discriminatory intent or disparate impact, and ruling that 1559–NS was not a regulatory taking of appellants' property. Plaintiffs appealed.

The appeals court found that Cal. Govt. Code § 65009(c)(1)(E) provides that the 90–day limitation period applies to any action "[t]o attack, review, set aside, void, or annul any decision on the matters listed in Section 65901 and 65903, or to determine the reasonableness, legality, or validity of any condition attached to a variance, conditional use permit, or any other permit."

1559–NS is a zoning ordinance and regulates mobile home park rents. Appellants' characterization of 1559–NS as a rent control law did not exempt the action from the 90–day statute of limitations.

Although Appellants also claimed their due process rights were violated because they were excluded from the closed-door meetings before the adoption of 1559–NS, regardless of how the decision was made, the lawsuit had to be filed no later than 90 days after adoption.

The Court also found that the stated purpose of 1559–NS was rational and nondiscriminatory and Plaintiffs' FHA claims, requiring intentional discrimination or a discriminatory motive, failed.

The Court further determined there was no housing discrimination or equal protection violation because disabled Ranch tenants were treated the same as non-disabled tenants.

Appellants argued that 1559–NS violated the FHA because it had a disparate impact on disabled senior citizens. 1559–NS, which had been in operation for four years, had not caused a single Ranch tenant to lose his or her housing. Ranch, even with a rent increase, was still the most affordable mobile home park in the city.

In addition, before 1559–NS was adopted, the Ranch owner agreed that rents would not exceed an 11.5 percent return on its investment. The maximum rent increase ($191.95 a month) authorized by 1559–NS was $20 less than the 11.5 percent cap ($214.66). 1559–NS was more protective of rent increases and spread the rent increase out over seven years. It provided for an interest-free deferral of any rent increase if a Ranch tenant could not afford to pay the rent increase. That was not a regulatory taking.

And, to show disparate impact, a plaintiff must show that there is an available alternative practice that has less disparate impact and serves City's legitimate needs. Appellants failed to do so.

Affirmed.

LEGISLATION

Arizona

Forcible detainer

2017 AZ H 2237. Enacted 3/21/2017. Effective 9/6/2017 (projected).

This bill amends Ariz. Rev. Stat. Ann. §§ 33-1305 and 33-1404 to provide that an agency of the state and an individual court may not adopt or enforce a rule or policy that requires a mandatory or technical form for providing notice or for pleadings in an action for forcible entry or forcible or special detainer. The form of any notice or pleading that meets statutory requirements for content and formatting of a notice or pleading is sufficient to provide notice and to pursue an action for forcible entry or forcible or special detainer.

LEGISLATION
Arizona
Deceased tenants – Change in use

2017 AZ H 2176. Enacted 3/29/2017. Effective 9/6/2017 (projected).

This bill adds Ariz. Rev. Stat. Ann. § 33-1419 to provide that a person who inherits a mobile home may do either of the following:

(a) reside in the mobile home on the premises only if the person meets the requirements prescribed for other tenants in the mobile home park, including compliance with age requirements, background checks and signing the mobile home park's standard rental documentation.

(b) sell the mobile home in accordance with the provisions of this article and the deceased tenant's rental agreement.

The person shall pay any amount past due to the landlord from the deceased tenant.

The landlord shall apply all of the deceased tenant's prepaid amounts or credits, including security deposits, for the benefit of the person inheriting the mobile home.

The bill amends Ariz. Rev. Stat. Ann. § 33-1476.01 to provide that, in the event of a change of use of a mobile home park, and after delivery of the required one hundred eighty-day notice, the landlord and the tenants shall inform any prospective buyer or tenant that closure of the park is pending.

The bill also amends Ariz. Rev. Stat. Ann. § 33-2122 to provide that the landlord or any person authorized to enter into a rental agreement on the landlord's behalf shall provide, before entering into a rental agreement for a recreational vehicle park trailer space, for persons who are purchasing or placing in the park a recreational vehicle that is a park trailer or park model, a notice that the park trailer or park model is governed by the Arizona Recreational Vehicle Long-Term Rental Space Act and not the Arizona Mobile Home Parks Residential Landlord and Tenant Act.

The bill also adds Ariz. Rev. Stat. Ann. §§ 33-2149, Change in use; notices; compensation for moving expenses; payments by the landlord, and 33-2151, Assessments for mobile home relocation fund; waiver, relating to recreational vehicles that are park trailers or park models only.

LEGISLATION
Arkansas
Service animals

2017 AR S 227. Enacted 3/24/2017. Effective 8/1/2017 (projected).

This bill amends Ark. Code Ann. § 20-14-304(a), concerning the right of an individual with disabilities to be accompanied by a service animal, to provide that every individual with visual, hearing, or other disabilities (formerly, other physical disabilities) has the right to be accompanied by a service animal especially trained to do work or to perform tasks for the benefit of an individual with a disability in or upon any and all public ways, public places, and other public accommodations and housing accommodations prescribed in § 20-14-303, and to be accompanied by a service dog as defined in Titles II and III of the Americans with Disabilities Act, as it existed on

January 1, 2017, and shall not be required to pay any extra fee or charge for the service animal (adding that that person has the right to be accompanied by a service dog as defined in Titles II and III of the Americans with Disabilities Act, as it existed on January 1, 2017).

LEGISLATION
Idaho
Rental agreements

2017 ID H 156. Enacted 3/24/2017. Effective 7/1/2017.

This bill amends Idaho Code § 55-2007 to provide that the requirement that the base upon which a mobile home or manufactured home is to be located be prepared in accordance with the provisions of section Idaho Code § 44-2201 shall be an implicit part of any rental agreement between a landlord and resident.

The bulk of the bill concerns Park Model RVs.

LEGISLATION
Mississippi
Commercial real estate broker liens

2017 MS S 2425. Enacted 3/20/2017. Effective 7/1/2017.

This bill repeals and reenacts sections 85-7-501 through 85-7-525, Mississippi code of 1972, known as the Commercial Real Estate Broker Lien Act.

The act defines Commercial Real Estate to include any real property or any and every interest or estate in land, which at the time the property or interest is made the subject of an agreement for broker services is lawfully used primarily for multifamily residential purposes involving five (5) or more dwelling units; or may lawfully be used for that purpose by a duly enacted zoning ordinance or which is the subject of an official application or petition to amend the applicable zoning ordinance to permit any of that use which is under consideration by the government agency with authority to approve the amendment; or is in good faith intended to be immediately used for that purpose by the parties to any contract, lease, option or offer to make any contract, lease, or option.

According to the act, a broker shall have a lien upon commercial real estate in the amount that the broker is due under a written agreement for broker services signed by the owner or signed by the owner's duly authorized agent, under specified conditions.

The lien under this section shall be available only to the broker named in the instrument signed by the owner or the owner's duly authorized agent.

A broker's lien is not valid or enforceable against a grantee or purchaser of an interest in the commercial real estate conveyed by the person owing the compensation if the grantee or purchaser is taking the property without existing tenants or leases covered by a written agreement for broker services if the deed or instrument transferring the interest is recorded before the broker's notice of lien is recorded.

LEGISLATION
Montana
Rental agreements

2017 MT H 350. Enacted 4/4/2017. Effective immediately.

This bill amends Mont. Code Ann. §§ 70-24-201 and 70-33-201, concerning residential and mobile home lot rental agreements, to permit payment of rent using electronic funds transfer to an account designated for the payment of rent by the landlord.

The bill also amends Mont. Code Ann. § 70-24-205, Extension of written rental agreements, to provide that, if the landlord and tenant fail to establish a default extension period for the lease in the rental agreement

and neither party gives a 30-day written notice to the other to terminate the tenancy before the rental agreement's original termination date, the tenancy continues on a month-to-month basis.

Formerly, this section provided:

(1) Prior to signing a written rental agreement, the landlord and tenant shall agree to accept a default extension period for the lease chosen by the tenant pursuant to subsection (2) that is to be given effect if a revised lease is not agreed to or if neither party gives a 30-day written notice of termination to the other prior to the rental agreement's original termination date.

(2) The tenant shall choose from a list of default options, including but not limited to renewal for an additional term of equal length as the original term, renewal for a set term that is not of equal length as the original term, renewal on a month-to-month basis, or termination of the tenancy.

(3) If neither party gives a 30-day written notice to the other as to the extension or termination of the tenancy, the mutually agreed upon default option takes effect immediately following the termination of the original rental agreement.

(4) If the landlord and tenant fail to establish a default option at the beginning of the tenancy as required in subsection (1) and neither party gives a 30-day written notice to the other to terminate the tenancy, the tenancy continues on a month-to-month basis.

The bill provides that it applies to rental agreements entered into, extended, or renewed on or after the effective date of the act.

ADOPTED RULE

New Jersey

Office of Landlord-Tenant Information

Effective 3/20/2017, this rule amends N.J. Admin. Code §§ 5:24-1.4, 2.2, 2.9; 5:25-2.2, 2.5, 2.8; 5:29-1.2.

These amendments delete references to the Office of Landlord-Tenant Information, as that office was eliminated in 2011. The amendments also otherwise update the requirements contained in the rules, deleting references to obsolete, incorrect, or unused terms and practices.

The amendments are as follows:

Condominium, Fee Simple and Cooperative Conversion and Mobile Home Park Retirement -

1. N.J.A.C. 5:24-1.4 - The amendment deletes a requirement to provide a copy of the subchapter or any statement of tenants' rights, which previously was available through the Office of Landlord-Tenant Information.

2. N.J.A.C. 5:24-2.2 - The amendment revises the rule to indicate that the form will be prescribed by the appropriate administrative agency or office, not the Department.

3. N.J.A.C. 5:24-2.9 - The amendments eliminate the obsolete references to forms provided by the Division of Codes and Standards. The requirement to send notice of the conversion recording to the Division also is deleted as this is a duplicative requirement. The Division receives notice as required by the Planned Real Estate Development (PRED) rules, N.J.A.C. 5:26.

Regulations Governing New Home Warranties and Builders' Registration -

4. N.J.A.C. 5:25-2.2 - The amendment eliminates a reference to the Division mailing renewal applications, as these forms now are available on the Division's webpage.

5. N.J.A.C. 5:25-2.5 - The amendment adds suspension as an action that may be taken by the Department at subsection (a). N.J.A.C. 5:25-2.5(e) is deleted. In practice, the homeowner hires another builder to complete unfinished projects. Projects are not completed by a suspended or revoked builder under the Bureau's supervision.

6. N.J.A.C. 5:25-2.8 - Subsection (c) providing for payment with interest, is deleted as this is not done in practice.

Landlord-Tenant Relations -

N.J.A.C. 5:29-1.2 - As stated above, the Office of Landlord-Tenant Information has been closed. Furthermore, the rules itemize what must be included in the Landlord Identity Statement. Accordingly, the reference to the availability of forms from the Office of Landlord-Tenant Information is deleted.

LEGISLATION
North Dakota
Convicted felons - Security

2017 ND H 1220. Enacted 3/13/2017. Effective 8/1/2017.

This bill amends N.D. Cent. Code § 47-16-07.1 to provide that a lessor may accept an amount or value of up to two month's rent, as security, from an individual convicted of a felony offense as an incentive to rent the property to the individual.

LEGISLATION
Utah
Rental applications

2017 UT H 83. Enacted 3/15/2017. Effective 5/9/2017.

This bill amends Utah Code Ann. § 57-22-2 to define "Rental application" as an application required by an owner as a prerequisite to the owner entering into a rental agreement for a residential rental unit.

The bill also amends Utah Code Ann. § 57-22-4 to add that an owner shall disclose in writing to an applicant for a residential rental unit:

(i) if there is an anticipated availability in the residential rental unit; and

(ii) the criteria that the owner will review as a condition of accepting the applicant as a tenant in the residential rental unit, including criteria related to the applicant's criminal history, credit, income, employment, or rental history.

An owner may not accept a rental application from an applicant, or charge an applicant a rental application fee, before the owner complies with the disclosure requirement, above.

LEGISLATION
Utah
Deficient conditions

2017 UT S 52. Enacted 3/21/2017. Effective 5/9/2017.

This bill amends Utah Code Ann. § 57-22-6, Renter remedies for deficient condition of residential rental unit, to provide that if, in an action where the court finds that the owner unjustifiably refused to correct a deficient condition or failed to use due diligence to correct a deficient condition, the renter is entitled to any damages.

The bill adds that, in an action under the chapter, the court may award costs and reasonable attorney fees to the prevailing party.

Formerly, the statute provided cost and attorney fees only to a renter in an action where the owner refused to correct a deficient condition.

The bill also amends Utah Code Ann. § 78B-6-811, Judgment for restitution, damages, and rent --

Immediate enforcement – Remedies, to similarly provide that in an action under the chapter, the court may award costs and reasonable attorney fees to the prevailing party.

Formerly, attorney fees were only available to the plaintiff where a judgment is entered against the defendant for rent.

LEGISLATION

Utah

Leases

2017 UT H 236. Enacted 3/24/2017. Effective 5/9/2017.

This bill amends Utah Code Ann. § 57-16-4, Termination of lease or rental agreement -- Required contents of lease -- Increases in rents or fees -- Sale of homes -- Notice regarding planned reduction or restriction of amenities, to provide that a mobile home park and a mobile home park resident that enter into an agreement for the lease of a mobile home park space shall:

(i) enter into the lease agreement in writing; and

(ii) sign the lease agreement.

A mobile home park shall, for each lease entered into by the mobile home park with a mobile home park resident:

(i) maintain a written copy of the lease; and

(ii) make a written copy of the lease available to the mobile home park resident that is a party to the lease:

(A) no more than seven calendar days after the day on which the mobile home park receives a written request from the mobile home park resident; and

(B) except for reasonable copying expenses, at no charge to the mobile home park resident.

Formerly, this section only required that each agreement for the lease of mobile home space be written and signed by the parties.

The bill deletes the requirement that the mobile home park post at all times in a conspicuous place in a common area of the mobile home park a notice that includes information on how to use the helpline described in Title 57, Chapter 16a, Mobile Home Park Helpline.

The bill amends Utah Code Ann. § 57-16-5, Cause required for terminating lease -- Causes -- Cure periods – Notice, to add that an agreement for the lease of mobile home space in a mobile home park may be terminated for failure by a mobile home park resident to enter into a written lease with the mobile home park that is offered by the mobile home park.

The bill further provides that a mobile home park may evict under Title 78B, Chapter 6, Part 8, Forcible Entry and Detainer, an individual who:

(a) has not entered into a written agreement with the mobile home park; and

(b) is residing in the mobile home park in violation of this chapter or a mobile home park rule.

The bill amends Utah Code Ann. §57-16-7, Rules of parks, to provide that a mobile home park may not make a rule that is unconscionable.

The bill also enacts Utah Code Ann. § 57-16-19, Violation of chapter by a mobile home park -- Remedies for a resident -- Attorney fees and costs, to provide that:

(1) A mobile home park resident may bring a cause of action against a mobile home park for damages or injunctive relief arising from a violation of this chapter.

(2) A court may award reasonable attorney fees and costs to the prevailing party in an action described in Subsection (1).

LEGISLATION
Utah
Unlawful detainer

2017 UT H 376. Enacted 3/25/2017. Effective 5/9/2017.

This bill amends Utah Code Ann. § 78B-6-810, Court procedures, to provide that, in an action for unlawful detainer, the court shall hold an evidentiary hearing, upon request of either party, within 10 business days after the day on which the defendant files an answer or response.

The amendment deletes the limitation that the action for unlawful detainer be where the claim is for nonpayment of rent or for occupancy of a property after a forced sale as described in Section 78B-6-802.5; specifies 10 business days (instead of "10 days"); and refers to the defendant's answer or response (formerly, just "the defendant's answer").

LEGISLATION
Virginia
Pest infestation

2016 VA H 1869. Enacted 3/3/2017. Effective 7/1/2017.

This bill amends Va. Code Ann. § 55-248.16 to provide that a tenant shall be financially responsible for the added cost of treatment or extermination due to the tenant's unreasonable delay in reporting the existence of any insects or pests and be financially responsible for the cost of treatment or extermination due to the tenant's fault in failing to prevent infestation of any insects or pests in the area occupied.

LEGISLATION
Virginia
Unlawful detainer

2016 VA H 1811. Enacted 3/13/2017. Effective 7/1/2017.

This bill amends Va. Code Ann. § 8.01-126, Summons for unlawful detainer issued by magistrate or clerk or judge of a general district court, to provide that if the unlawful detainer summons served upon the defendant requests judgment for all amounts due as of the date of the hearing, the court shall permit amendment of the amount requested on the summons for unlawful detainer filed in court in accordance with the evidence and in accordance with the amounts contracted for in the rental agreement (adding, "and in accordance with the amounts contracted for in the rental agreement.").

The bill amends Va. Code Ann. § 8.01-128, Verdict and judgment; damages, to provide that the plaintiff may, alternatively, receive a final, appealable judgment for possession of the property unlawfully entered or unlawfully detained and be issued a writ of possession at the initial hearing on a summons for unlawful detainer, upon evidence presented by the plaintiff to the court. At the initial hearing, upon request of the plaintiff, the court shall bifurcate the unlawful detainer case and set a continuance date no later than 120 days from the date of the initial hearing to determine final rent and damages. On such continuance date, the court shall permit amendment of the amount requested on the summons for unlawful detainer filed in court in accordance with the (i) notice of hearing to establish final rent and damages mailed to the last known address of the defendant and filed with the court at least 15 days prior to the continuance date as provided herein, (ii) evidence presented to the court, and (iii) amounts contracted for in the rental agreement.

The bill also amends Va. Code Ann. § 8.01-129, Appeal from judgment of general district court, to provide that

in cases where the court's order permits immediate processing of a writ of execution in order to schedule an eviction date, in no case shall such eviction be executed (a) until expiration of the tenant's 10-day appeal period or (b) if the tenant perfects an appeal pursuant to this section.

Finally, the bill amends Va. Code Ann. § 16.1-94.01, When and how satisfaction entered on judgment, to provide that when satisfaction of any judgment rendered in a court not of record is made, the judgment creditor shall by himself, or his agent or attorney, give written notice of such satisfaction, within 30 days of receipt, to the clerk of the court in which the judgment was rendered. Such notice shall include the docket number, the names of the parties, and the date of the judgment. Formerly, the notice had to include the amount of the judgment and the date of the satisfaction.

LEGISLATION
Virginia
Park models

2016 VA S 1497. Enacted 3/13/2017. Effective 7/1/2017.

This bill amends the definitions in Va. Code Ann. § 46.2-100 to provide that "manufactured home" does not include a park model recreational vehicle, which is a vehicle that is (i) designed and marketed as temporary living quarters for recreational, camping, travel, or seasonal use; (ii) not permanently affixed to real property for use as a permanent dwelling; (iii) built on a single chassis mounted on wheels; and (iv) certified by the manufacturer as complying with the American National Standards Institute (ANSI) A119.5 Park Model Recreational Vehicle Standard.

LEGISLATION
Virginia
Assistance animals

2016 VA S 1228. Enacted 3/16/2017. And **2016 VA H 2006**. Enacted 3/24/2017. Effective 7/1/2017.

These bills amend Va. Code Ann. § 36-96.1:1 by adding definitions for “assistance animal,” “major life activities” and “physical or mental impairment.”

The bills add Va. Code Ann § 36-96.3:1, Rights and responsibilities with respect to the use of an assistance animal in a dwelling, to provide that a person with a disability, or a person associated with such person, who maintains an assistance animal in a dwelling shall comply with the rental agreement or any rules and regulations of the property owner applicable to all residents that do not interfere with an equal opportunity to use and enjoy the dwelling and any common areas of the premises. Such person shall not be required to pay a pet fee or deposit or any additional rent to maintain an assistance animal in a dwelling, but shall be responsible for any physical damages to the dwelling if residents who maintain pets are responsible for such damages in accordance with such documents or state law.

If a person's disability is obvious or otherwise known to the person receiving a request, or if the need for a requested accommodation is readily apparent or known to the person receiving a request, the person receiving a request for reasonable accommodation may not request any additional verification about the requester's disability.

The bills also adds Va. Code Ann. § 36-96.3:2, Reasonable accommodations, interactive process, to provide that when a request for a reasonable accommodation may impose either (i) an undue financial and administrative burden or (ii) a fundamental alteration to the nature of the operations of the person receiving the request, the

person receiving the request shall offer to engage in a good-faith interactive process to determine if there is an alternative accommodation that would effectively address the disability-related needs of the requester. An interactive process is not required when the requester does not have a disability and a disability-related need for the requested accommodation. As part of the interactive process, unless the reasonableness and necessity for the accommodation has been established by the requester, a request may be made for additional supporting documentation to evaluate the reasonableness of either the requested accommodation or any identified alternative accommodations. If an alternative accommodation is identified that effectively meets the requester's disability-related needs and is reasonable, the person receiving the reasonable accommodation request shall make the effective alternative accommodation. However, the requester shall not be required to accept an alternative accommodation if the requested accommodation is also reasonable.

A request for a reasonable accommodation shall be determined on a case-by-case basis and may be denied if (i) the person on whose behalf the request for an accommodation was submitted is not disabled; (ii) there is no disability-related need for the accommodation; (iii) the accommodation imposes an undue financial and administrative burden on the person receiving the request; or (iv) the accommodation would fundamentally alter the nature of the operations of the person receiving the request.

LEGISLATION

Virginia

Tenancy - Submetering

2016 VA H 2033. Enacted 3/24/2017. Effective 7/1/2017.

This bill amends Va. Code Ann. § 55-217, Applicability; right to terminate tenant, to provide that the provisions of this chapter shall apply to all residential dwelling units as specified herein. The right to evict a tenant whose right of possession has been terminated in a residential tenancy under this chapter may only be effectuated by the filing of an unlawful detainer action, entry of an order of possession, and eviction pursuant to Section 55-237.1.

The bill adds Va. Code Ann. § 55-225.02, Definitions for residential dwelling units subject to this chapter, to provide definitions, including:

"Dwelling unit" means a structure or part of a structure that is used as a home or residence by one or more persons who maintain a household, including a manufactured home as defined in Section 55-248.41.

"Written notice" means notice given in accordance with Section 55-225.20, including any representation of words, letters, symbols, numbers, or figures, whether (i) printed in or inscribed on a tangible medium or (ii) stored in an electronic form or any other medium, retrievable in a perceivable form, and regardless of whether an electronic signature authorized by the Uniform Electronic Transactions Act (Section 59.1-479 et seq.) is affixed.

The bill amends Va. Code Ann. § 55-225.3, Landlord to maintain dwelling unit, to provide that where there is visible evidence of mold, the landlord shall promptly remediate the mold conditions in accordance with the requirements of subsection E of Section 8.01-226.12 and reinspect the dwelling unit to confirm that there is no longer visible evidence of mold in the dwelling unit. The landlord shall provide a tenant with a copy of a summary of information related to mold remediation occurring during that tenancy and, upon request of the tenant, make available the full package of such information and reports not protected by attorney-client privilege. Once the mold has been remediated in accordance with professional standards, the landlord shall not be required to make disclosures of a past incidence of mold to subsequent tenants.

The landlord must provide and maintain appropriate receptacles and conveniences for the collection, storage, and removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of one or more dwelling units and arrange for the removal of same.

The bill amends Va. Code Ann. § 55-225.4, Tenant to maintain dwelling unit, to provide that a tenant shall keep that part of the dwelling unit and the part of the premises that he occupies free from insects and pests, as those terms are defined in Section 3.2-3900, and promptly notify the landlord of the existence of any insects or pests, and keep all utility services paid for by the tenant to the utility service provider or its agent on at all times during the term of the rental agreement.

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

The bill also adds Va. Code Ann. § 55-225.11:1, Required disclosures for properties located adjacent to a military air installation; remedy for nondisclosure.

The bill amends Va. Code Ann. § 55-225.13, Noncompliance by landlord in the rental of a dwelling unit, to provide that if the rental agreement is terminated due to the landlord's noncompliance, the landlord shall return the security deposit in accordance with Section 55-225.19.

The bill adds Va. Code Ann. §§ 55-225.19 – 55-225.48, including:

Section 55-225.19. Security deposits;

Section 55-225.20. Notice (defining notice and including that the landlord and tenant may send notices in electronic form);

Section 55-225.21. Application deposit and application fee (providing that any landlord may require a refundable application deposit in addition to a nonrefundable application fee);

Section 55-225.22. Terms and conditions of rental agreement; copy for tenant; rental payments;

Section 55-225.23. Prepaid rent; maintenance of escrow account;

Section 55-225.24. Landlord may obtain certain insurance for tenant;

Section 55-225.25. Effect of unsigned or undelivered rental agreement;

Section 55-225.26. Confidentiality of tenant records;

Section 55-225.27. Landlord and tenant remedies for abuse of access;

Section 55-225.28. Actions to enforce remedies pertaining to residential tenancies;

Section 55-225.29. Disclosure (requiring the disclosure of the person or persons authorized to manage the premises, an owner of the premises and, in the event of the sale of the premises, the fact of the sale and the purchaser);

Section 55-225.30. Notice to tenants for insecticide or pesticide use;

Section 55-225.31. Limitation of liability;

Section 55-225.32. Tenancy at will; effect of notice of change of terms or provisions of tenancy;

Section 55-225.33. Rules and regulations (including conditions required to make any such rule or regulation enforceable against a tenant);

Section 55-225.34. Access; consent; correction of nonemergency conditions; relocation of tenant;

Section 55-225.35. Fire or casualty damage;

Section 55-225.36. Use and occupancy by tenant (providing that, unless otherwise agreed, the tenant shall occupy his dwelling unit only as a residence);

Section 55-225.37. Tenant to surrender possession of dwelling unit;

Section 55-225.38. Periodic tenancy; holdover remedies;

Section 55-225.39. Remedies for absence, nonuse and abandonment;

Section 55-225.40. Disposal of property abandoned by tenants;

Section 55-225.41. Authority of sheriff to store and sell personal property removed from residential premises; recovery of possession by owner; disposition or sale;

Section 55-225.42. Disposal of property of deceased tenants;

Section 55-225.43. Noncompliance with rental agreement; monetary penalty;

Section 55-225.44. Barring guest or invitee of tenants;

Section 55-225.45. Sheriff authorized to serve certain notices; fees therefor;

Section 55-225.46. Remedy by repair, etc.; emergencies;

Section 55-225.47. Landlord's acceptance of rent with reservation; and

Section 55-225.48. Remedy after termination.

The bill amends Va. Code Ann. § 55-226.2, Energy submetering, energy allocation equipment, sewer and water submetering equipment, ratio utility billings systems; local government fees, to provide that nothing in this section shall be construed to prohibit an owner, manager, or operator of a commercial or residential building, manufactured home park, or campground from including water, sewer, electrical, natural gas, oil, or other utilities in the amount of rent as specified in the rental agreement or lease (adding, oil).

The bill amends Va. Code Ann. § 55-237.1, Authority of sheriffs to store and sell personal property removed from nonresidential premises; recovery of possession by owner; disposition or sale, by removing references to residential premises.

LEGISLATION
Virginia
Building Code violations

2016 VA H 2203. Enacted 3/24/2017. Effective immediately.

This bill directs the Department of Housing and Community Development to consider including in the current revision of the Uniform Statewide Building Code a provision designed to ensure that localities provide appropriate notice to residents of manufactured home parks of any Building Code violation by a park owner that jeopardizes the health and safety of those residents and report to the General Assembly regarding the status of such efforts no later than November 1, 2017.

LEGISLATION
Virginia
Uncorrected violations

2016 VA S 1123. Enacted 3/24/2017. Effective 7/1/2017.

This bill adds Va. Code Ann. § 55-248.49:1, Notice of uncorrected violations, to provide that if a landlord does not remedy a violation of an ordinance that pertains to the health and safety of tenants in a manufactured home park within seven days of receiving notice from the locality of such violation, the locality shall notify tenants of the manufactured home park who are affected by the violation. Such notification may consist of posting the notice of violation in a conspicuous place in the manufactured home park or mailing copies of the notice to affected tenants.

LEGISLATION

Virginia

Water and sewer – Fees and charges

2016 VA S 1189. Enacted 3/24/2017. Effective 7/1/2017.

This bill adds Va. Code Ann. § 15.2-2119.4, Fees and charges for water and sewer services provided to a tenant or lessee of the property owner.

This section provides that a locality or authority providing water or sewer services to a lessee or tenant of the property owner shall do so directly to the tenant after (i) obtaining from the property owner a written or electronic authorization to obtain water and sewer services in the name of such lessee or tenant and (ii) if the locality or authority decides to use the lien rights afforded under subsection G of Section 15.2-2119, collecting a security deposit from the lessee or tenant as reasonably determined by the locality to be sufficient to collateralize the locality or authority for not less than three and no more than five months of water and sewer charges. When the property owner has provided the lessee or tenant with written authorization from the property owner to obtain water and sewer services in the name of such lessee or tenant, nothing herein shall be construed to authorize the locality or authority to require (a) the property owner to put water and sewer services in the name of such property owner, except in the case where a single meter serves multiple tenant units, or (b) a security deposit or a guarantee of payment from such property owner. The property owner, lessee, or tenant may provide a copy of the lease or rental agreement to the locality or authority in lieu of the written authorization.

For purposes of this section, a written or electronic authorization from the property owner to obtain water and sewer services in the name of such lessee or tenant substantially in the form provided in the section, or a copy of the lease or rental agreement, shall be sufficient compliance with this section.

At least 10 business days prior to ceasing the supply of water or sewage disposal services for nonpayment, the locality or authority supplying such services shall provide the lessee or tenant with written notice of such cessation, with a copy to the property owner.

If the lessee or tenant does not pay the full amount of charges, penalty, and interest, in addition to cessation of such service, the locality or authority shall employ reasonable collection efforts and practices to collect amounts due from the lessee or tenant prior to sending written notice to, or taking any collection or legal action against, the property owner regarding the delinquency of payment of such lessee or tenant.

Only after reasonable collection efforts to collect such fees and charges from the lessee or tenant may the locality or service authority proceed to notify the property owner of such outstanding lien obligation of such lessee or tenant and thereafter to record a lien against the property owner and only after notice to the property owner as required in Section 15.2-2119. Such a lien, up to three months of delinquent water and sewer charges, shall constitute a lien against the property ranking on a parity with liens for unpaid taxes.

If a lien is recorded against the property owner and the property owner pays any of the delinquent obligations of such former lessee or tenant, upon payment of the outstanding balance, or any portion thereof, or of any amounts of such fees and charges owed by the former tenant, the property owner shall be entitled to receive any refunds and shall be subrogated against the former tenant in place of the locality or authority in the amount paid by the property owner.

Unless a lien has been recorded against the property owner, the locality or authority shall not deny service to a new tenant who is requesting service at a particular property address based upon the fact that a former

tenant has not paid any outstanding fees and charges charged for the use and services in the name of the former previous tenant.

If the property owner provides the locality or authority a request to be notified of a tenant's delinquent water or sewer bill and provides an email address, the locality or authority shall send the property owner notice when a tenant's water or sewer bill has become 15 days delinquent.

When a locality or authority does not require a lessee or tenant to pay a security deposit to the locality or authority as a condition precedent to turning on water or sewer services in the name of the lessee or tenant, such locality or authority shall waive its lien rights against the property owner.

The locality or authority shall not require a security deposit from the lessee or tenant to obtain water and sewer services in the name of such lessee or tenant if such lessee or tenant presents to the locality or authority a landlord authorization letter that has attached documentation showing that such lessee or tenant receives need-based local, state, or federal rental assistance, and the absence of a security deposit shall not prevent a locality from exercising its lien rights as authorized under this section.

LEGISLATION

Wyoming

Service animals

2017 WY H 114. Enacted 3/3/2017. Effective 7/1/2017.

This bill amends Wyo. Stat. Ann. § 35-13-201 to provide that a person shall not be discriminated against in the leasing or rental of residential property because the person has an assistance animal (formerly, a service dog), which shall be permitted in leased or rented residential property in accordance with the federal Fair Housing Act. The person shall be liable for any damage done by his assistance animal to the premises or facilities of the leased or rented residential property.

A public accommodation, or any agent or employee thereof, that permits a service animal or an animal believed in good faith to be a service animal in its place of public accommodation is not liable for any damage or injury caused by the animal.

The bill amends Wyo. Stat. Ann. § 35-13-203 to provide that any person who knowingly and intentionally misrepresents that an animal is a service animal or an assistance animal for the purpose of obtaining any of the rights or privileges set forth in this article is guilty of a misdemeanor and may be fined not more than seven hundred fifty dollars ($750.00).

The bill amends Wyo. Stat. Ann. § 35-13-205 to add that:

"Assistance animal" means an animal that works, provides assistance or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person's disability;

"Place of public accommodation" means as defined in 28 C.F.R. 36.104;

"Public accommodation" means as defined in 28 C.F.R. 36.104;

"Public entity" means as defined in 28 C.F.R. 35.104;

"Service animal" means as defined in 28 C.F.R. 35.104 and 28 C.F.R. 36.104 and includes service miniature horses pursuant to 28 C.F.R. 35.136 and 28 C.F.R. 36.302(c).

The bill amends Wyo. Stat. Ann. § 35-13-206. Injuring or killing a service or assistance animal prohibited; penalties, by replacing “service dog” with “service animal.”

DEFAULT SERVICING

CASE LAW

FDCPA – Security interest

CASE NAME: *Dowers v. Nationstar Mortgage, LLC*
DATE: *03/31/2017*
CITATION: *United States Court of Appeals, Ninth Circuit. --- F.3d ----. 2017 WL 1192207*

Borrowers brought an action in state court against their home loan servicer, alleging violations of the FDCPA, intentional infliction of emotional distress, and violation of Nevada Deceptive Trade Practices Act (DTPA). With respect to the FDCPA claims, the district court found that Plaintiffs did not state a claim for relief because Defendants' alleged conduct was a non-judicial foreclosure attempt, not debt collection.

On appeal, the Court found that the FDCPA claims under 15 U.S.C. §§ 1692c(a)(2), 1692d, and 1692e failed because a "debt" under those sections is synonymous with "money." For purposes of the FDCPA, outside of Section 1692f(6), a security interest enforcer is not a debt collector.

The Section 1692f(6) claim, however, governed Defendants' alleged conduct because it expressly applies to the enforcement of security interests such as a deed of trust.

Nationstar's conduct was not an attempt to collect a money debt, which is a necessary element of a claim under Sections 1692c(a)(2), 1692d, or 1692e.

But Plaintiffs alleged that Nationstar threatened to take non-judicial action to dispossess Plaintiffs of their home without a legal ability to do so. Such conduct is exactly what Section 1692f(6) protects borrowers against. As a result, the district court should not have dismissed Count Four on the ground that Nationstar was engaging in conduct related to non-judicial foreclosure.

The Court also agreed with the District Court that the servicer did not engage in extreme and outrageous conduct by threatening to foreclose on property without authority to do so because it did not possess original loan documents, contacting borrowers directly after their attorney told it to not do so, and delaying rescission of previously-recorded notice of default.

Further, a real estate loan is neither a good nor a service within the meaning of the Nevada DTPA.

Affirmed in part, reversed in part, and remanded.

LEGISLATION

Kentucky

Judgment interest

2017 KY H 223. Enacted 3/16/2017. Effective 6/28/2017.

This bill amends Ky. Rev. Stat. Ann. § 360.040 to provide that a judgment, including a judgment for prejudgment interest (adding the reference to prejudgment interest), shall bear 6% (formerly, 12%) interest compounded annually from the date the judgment is entered.

However, the bill also provides that a judgment rendered on a contract, promissory note, or other written obligation shall bear interest at the interest rate established in that contract, promissory note, or other written obligation.

LEGISLATION

Utah

Judgment interest

2017 UT S 225. Enacted 3/24/2017. Effective 5/9/2017.

This bill amends Utah Code Ann. § 15-1-4, Interest on judgments.

The bill provides that a judgment under $10,000 in an action regarding the purchase of goods and services shall

bear interest from the date on which the district court or justice court enters the judgment at 10% plus the federal post judgment interest rate.

LEGISLATION
West Virginia
Judgment interest

2017 WV H 2678. enacted 3/30/2017. Effective 1/1/2018.

This bill amends W. Va. Code § 56-6-31 to change the amounts of prejudgment and post-judgment interest to two percentage points above the Fifth Federal Reserve District secondary discount rate in effect on January 2, of the year in which the right to bring the action has accrued or the year in which the judgment or decree is entered, respectively. The minimum rate will be 45 per annum and the maximum will be 9% per annum.

LENDING

LEGISLATION
New York
Loan consummation

2017 NY S 982. Enacted 3/15/2017. Effective immediately.

This bill amends N.Y. Banking Law § 2(30), defining when a mortgage loan is consummated to include when an applicant executes a promissory note and mortgage by electronic signature, in accordance with applicable federal and state laws, rules, and regulations.

LEGISLATION
South Dakota
Fees

2017 SD H 1090. Enacted 3/10/2017. Effective 7/1/2017.

This bill adds a new section to provide that, for purposes of S.D. Codified Laws § 54-4-44, fees contracted for or received that are "incident to the extension of credit" in connection with a loan for the purchase of a motor vehicle do not include fees for optional maintenance agreements and extended service contracts, official fees and taxes, sales tax, title fees, lien registration fees, and dealer documentary fees.

The bill also adds another new section to provide that, for the purposes of S.D. Codified Laws § 54-4-44 for all loans, late fees, return check fees, and attorney's fees incurred upon consumer default are not fees "incident to the extension of credit."

Please note that optional maintenance agreements and extended service contracts, official fees and taxes, sales tax, title fees, lien registration fees, and dealer documentary fees are only excluded for motor vehicle secured transactions.

A motor vehicle appears to be defined to include a manufactured home as defined in the Motor Vehicle Title Registration, Liens and Transfers Chapter, see S.D. Codified Laws s 32-3-1. As a result, an argument can be made that these charges are excluded from the rate cap in manufactured housing transactions. However, "motor vehicle" is not defined in the Money Lending Law, which means it is unclear whether the provisions allowing these charges to be excluded from the usury cap for purchase money motor vehicle secured loans will extend to purchase money manufactured home loans.

LICENSING

LEGISLATION
Arizona
Dealers - Brokers

2017 AZ H 2072. Enacted 3/21/2017. Effective 9/6/2017 (projected).

This bill amends Ariz. Rev. Stat. Ann. § 41-4028 to provide that licensing requirements for dealers and brokers do not apply to any of the following:

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

(b) new or used manufactured homes and mobile homes that are located in mobile home parks as defined in section 33-1409 if the licensed real estate broker or real estate salesman is acting as an agent for a licensed manufactured housing dealer and the dealer is responsible for filing all of the required paperwork and submitting the required fees on the sale of the home pursuant to this chapter.

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

MANUFACTURING

EFFECTIVE DATE
EPA
Formaldehyde

In the December 2016 McGlinchey Stafford Manufactured Housing Law Update, we advised you of the EPA's final rule on Formaldehyde Emissions Standards, 40 CFR Part 770, to be effective 2/10/2017.

Please note that effective date has been delayed until 5/22/2017 (82 Fed. Reg. 14324 (3/20/2017)).

TAXATION

LEGISLATION
Utah
Sales and use tax

2017 UT S 119. Enacted 3/25/2017. Effective 5/9/2017, with retrospective operation to 1/1/2017.

This bill adds a local option sales and use tax to the definition of "agreement sales and use tax" and incorporates the defined terms "purchase price" and "sales price" into the sections that authorize imposition of a sales and use tax.

LEGISLATION
Utah
Property tax – Surviving spouse

2017 UT H 64. Enacted 3/25/2017. Effective 5/9/2017, with retrospective operation to 1/1/2017.

This bill modifies taxation provisions to address property tax relief by addressing when a surviving spouse may claim property tax relief.

The bill provides that "claimant" includes a surviving spouse:

(i) regardless of:

(A) the age of the surviving spouse; or

(B) the age of the deceased spouse at the time of death;

(ii) if the surviving spouse meets the requirements of this part except for the age requirement;

(iii) if the surviving spouse is part of the same household of the deceased spouse at the time of death of the deceased spouse; and

(iv) if the surviving spouse is unmarried at the time the surviving spouse files the claim.

LEGISLATION
Virginia
Real estate tax

2016 VA H 1992. Enacted 3/16/2017. Effective 7/1/2017.

This bill relates to lien priority by inserting "real estate" in several places related to the priority of tax liens for unpaid local real estate taxes and the abatement or removal of nuisances.

By way of an example, Va. Code Ann. § 15.2-1115 now provides: Such liens shall have the same priority as liens for other unpaid local **real estate** taxes and shall be enforceable in the same manner as provided in Articles 3 (Section 58.1-3940 et seq.) and 4 (Section 58.1-3965 et seq.) of Chapter 39 of Title 58.1.

TITLING AND PERFECTION

LEGISLATION
Arkansas
Electronic liens

2017 AR S 749. Enacted 3/27/2017. Effective 8/18/2017 (projected).

This bill amends Ark. Code Ann. § 27-14-806(a), concerning optional means of recording liens and encumbrances, to provide that a lienholder may record the lien on a motor vehicle, an all-terrain vehicle, a mobile home or manufactured home, if the Office of Motor Vehicle determines it is technologically and economically feasible to offer the ability to electronically record a lien, through the electronic lien recording database established by the Department of Finance and Administration.

J.D. Harper, Executive Director of the Arkansas Manufactured Housing Association, reports that the AMHA was supportive of this law, and will work with the Department of Finance and Administration in the next few months to develop procedures and processes to implement the law.

LEGISLATION
Kentucky
Severance

2017 KY H 270. Enacted 3/21/2017. Effective 6/28/2017.

This bill adds a new section to Ky. Rev. Stat. Ann., Chapter 186A to provide that the owner of a manufactured home that has been converted to real estate may detach or sever the home from the real property only by filing an affidavit of severance with the clerk of the county in which the affidavit of conversion originally took place and in which the real estate is located.

The bill provides the information required to be included in the affidavit.

An owner who fails to file an affidavit of severance prior to removal of the manufactured home shall be liable for actual damages or $500, whichever is greater, payable to any first lien holder of record, or if no such lien holder exists, to be payable to the clerk of the county in which the affidavit of conversion first took place, upon notice to the clerk that the manufactured home was not removed within 30 days of the date of filing of the affidavit of severance.

The county clerk shall receive a fee of $16 for the service provided under this section.

For the purposes of this section, "owner" means the party who holds the legal title to the real estate where the manufactured home is located prior to being moved. It shall not include the party who is acquiring the manufactured home.

LEGISLATION
Kentucky
Speed title

2017 KY H 27. Enacted 3/27/2017. Effective 6/28/2017.

This bill amends Ky. Rev. Stat. Ann. § 186A.170 to provide that the Department of Vehicle Regulation shall, within forty-eight (48) (formerly, 24) hours following electronic notification by a county clerk's office of an application for a certificate of title, issue a speed title which shall be held for pickup or returned to the owner by mail. The clerk shall take the application for title and process the appropriate paperwork as provided for in this chapter.

LEGISLATION
North Dakota
Manufactured home as real estate

2017 ND H 1219. Enacted 3/22/2017. Effective 8/1/2017.

This bill amends the Vehicle Code, N.D. Cent. Code § 39-05-22, to require that the Department of Transportation ("DOT") maintain a website accessible to interested parties to confirm the status of a manufactured home as real estate and confirm a manufacturer's certificate of origin or certificate of title has been retired.

The bill also amends the Property Code, N.D. Cent. Code § 47-10-27(7), (8) to clarify that DOT has no authority over the conveyance and encumbrance of a manufactured home for which the conversion process has been confirmed. McGlinchey Stafford drafted this legislation.

Despite the 8/1/2017 effective date, the North Dakota Department of Transportation, Motor Vehicle Division ("NDDOT MVD") activated the online search to confirm a manufactured home has been converted to real estate on March 31, 2017.

LEGISLATION
North Dakota
Affidavit of affixation

2017 ND H 1250. Enacted 3/22/2017. Effective 8/1/2017.

This bill amends N.D. Cent. Code § 11-18-02.2 to provide that any grantee or grantee's authorized agent who presents a deed in the office of the county recorder shall certify on the face of the deed one of the following:

A statement of the full consideration paid for the property conveyed; or

A statement designating one of the exemptions which the grantee believes applies to the transaction.

(Formerly, these options included: a statement that the grantee has filed a report of the full consideration paid for the property conveyed with the state board of equalization; or a statement that the grantee has filed a report of the full consideration paid for the property conveyed with the recorder.)

The bill provides that any party who presents an affidavit of affixation to real property of a manufactured home in the office of the county recorder in accordance with section 47-10-27 and who acquired the manufactured home before the affixation of the manufactured home to the real property shall either contain in or present in addition to the affidavit of affixation a statement of the full consideration paid by the party for the manufactured home before the affixation.

(The bill deletes the options of: a statement that the party has filed with the State Board of Equalization a report of the full consideration paid for the manufactured home before the affixation; or a statement that the party has filed with the recorder a report of the full consideration paid for the manufactured home before the affixation).

The bill also amends N.D. Cent. Code § 47-10-27 to provide that if the party executing the affidavit acquired the manufactured home before the affixation of the manufactured home to the real property, that party shall complete the statement (formerly, one of the statements) required by subsection 2 of section 11-18-02.2.

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.

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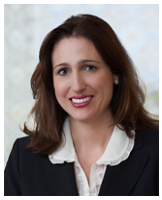

LAURA GRECO is a member in the consumer financial services, business law, and commercial litigation groups of the firm's Albany office. Laura represents manufactured housing lenders, banks, mortgage companies and other financial institutions in lawsuits involving all areas of consumer finance. Laura has experience dealing with claims that include federally regulated areas such 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.

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ABOUT MHI:

The Manufactured Housing Institute (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.