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!

We apologize for any paper cuts that you receive reading the May update. Due to active state legislatures, this update is rather lengthy.

Texas adopted its manufactured housing clean-up bill, which makes several changes to the Occupations Code, including removing confusing references to "lease purchases." Also, if your operation is in Texas and you liked the name of your title documents, your SOL……is no more.

Trending this month is legislation impacting charging consumers for water and sewer services, such as through sub-metering. Legislation that prohibits landlords or political subdivisions from discouraging residents from seeking emergency assistance was also popular last month.

On the lending front, Iowa made changes to the permissible fees charged in connection with transactions subject to the ICCC and amended the ICCC by increasing the consequences of making a loan without a license.

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ARBITRATION

CASE LAW

Non-signatories – Beneficiaries

CASE NAME: *Jacks v. CMH Homes, Inc.*
DATE: *05/17/2017*
CITATION: *United States Court of Appeals, Tenth Circuit. 856 F.3d 1301. 2017 WL 2129555*

Jacquelyn Jacks bought a manufactured home from CMH Homes, Inc., financed through CMH Homes under a manufactured home retail installment contract. The contract contained an arbitration agreement, which provided that all disputes arising from, or relating to, the contract would be resolved by binding arbitration. By its terms, "[t]his Arbitration Agreement also covers all co-signors and guarantors who sign this Contract and any occupants of the manufactured Home (as intended beneficiaries of this Arbitration Agreement)." There were no cosigners or guarantors. Jacks, along with her husband and their children, moved into the manufactured home soon after it was delivered and installed by CMH Homes.

About five years later, Jacks and her family brought suit in state court against CMH Homes, CMH Manufacturing, and Vanderbilt Mortgage and Finance, alleging that the home was negligently installed, unreasonably dangerous, and unfit for habitation. Jacks sought to rescind her purchase, along with her agreement to pay Vanderbilt the indebtedness incurred to purchase the home.

Defendants removed the case to federal court and moved to compel arbitration and stay the court proceedings. The district court granted the motion to compel as to the claims of Jacks but denied the motion as to the remaining Plaintiffs, who were not parties to the retail installment contract. It held that "the single sentence in the Arbitration Agreement generically referencing 'any occupants of the Manufactured Home (as intended beneficiaries of this Arbitration Agreement)' was not sufficient to make the nonsignatory plaintiffs, who were occupants of the home, third party beneficiaries of the Arbitration Agreement and subject to being compelled to arbitration." The district court also rejected Defendants' contention that the nonsignatory Plaintiffs were "bound to arbitrate their claims" under "the doctrine of equitable estoppel." Defendants appealed.

The appeals court found that Defendants had not cited authority, and the Court was not aware of any, that says a contract can be enforced against an intended third-party beneficiary who has not accepted the benefit or otherwise sought to enforce the terms of the contract.

The Court also noted that Defendants advanced a theory of integrally-related-claim estoppel, sometimes referred to as the "intertwined claims" theory, arguing that "[b]ecause the nonsignatories' claims are identical to Jackie Jacks' claims and are 'integrally related' to the [contract] setting forth the Arbitration Agreement, all Plaintiffs are subject to the Arbitration Agreement." The Court found this theory of estoppel did not govern the present case, where a signatory-defendant sought to compel arbitration with a nonsignatory-plaintiff.

On appeal, Defendants also argued for the "direct-benefit estoppel doctrine," which applies when a nonsignatory knowingly exploits the agreement containing the arbitration clause. According to the Court, some states have embraced the doctrine of direct-benefits estoppel, but Oklahoma has not. In any event, the Court found that this argument was waived because Defendants did not raise direct-benefit estoppel below.

Affirmed.

COMMUNITIES

CASE LAW

Sale of park – Change in use

CASE NAME: *Aeon v. Lowry Grove Partnership, LLP*
DATE: *05/08/2017*
CITATION: *Court of Appeals of Minnesota. Not Reported in N.W.2d. 2017 WL 1861780*

Lowry Grove is a manufactured home park that was owned by respondent Lowry Grove Partnership LLP (LGP). LGP sent a notice to all of its park residents that it would sell the park to respondent The Village LLC and that The Village intended to close the park.

Minn. Stat. § 327C.095 provides that, for a 45-day period after notice is sent from the park owner of a proposed sale, owners of at least 51 percent of the manufactured homes in the park (or a nonprofit organization with written permission from the owners of at least 51 percent of the manufactured homes) have "the right to meet the cash price [offered by the prospective buyer] and execute an agreement to purchase the park for the purposes of keeping the park as a manufactured housing community." The same statute requires the park owner to "accept the offer if it meets the cash price and the same terms and conditions set forth in the purchaser's offer."

Within the 45-day period, appellant Aeon, a nonprofit organization, presented LGP with what it claimed was a valid purchase agreement, a check for the required cash price, and signatures from at least 51 percent of Lowry Grove's manufactured home owners granting Aeon permission to purchase the park. LGP decided that it was not required to accept Aeon's offer, and, after the 45-day notice period expired, LGP sold the park to The Village.

Appellants sued, claiming: that LGP violated Minn. Stat. § 327C.095, subd. 6, by selling the park to The Village after Aeon made a valid offer, and asking the district court to void LGP's conveyance to The Village; and that Minn. Stat. § 327C.095, subd. 7, also granted appellants a separate right to purchase the park from The Village, and asking the district court to order The Village to offer the park for sale to them. Appellants asked for "injunctive relief" and monetary damages for respondents' violation of subdivision 6; for the court to order LGP to specifically perform the terms of Aeon's purchase agreement, because the sale to The Village violated subdivision 6; and for the district court to order LGP to accept Aeon's purchase agreement because LGP had violated subdivision 6; or, in the alternative, enjoin The Village from taking steps to close the park and order The Village to sell the park to Aeon pursuant to subdivision 7.

The district court concluded that any relief to which appellants might be entitled was limited to monetary relief. Aeon appealed.

The appeals court found that Minn. Stat. § 327C.095, subd. 9 allows a district court to grant equitable relief, so long as the relief granted does not affect the marketability of title to the real estate on which the manufactured home park is situated. But the Court further found that equitable relief not affecting marketability of title is unambiguously available under the statute. The Court observed that appellants suggested equitable remedies that would not affect marketable title, including an injunction preventing or delaying The Village from closing the park, ordering The Village to pay for residents' relocation costs, ordering appellants to provide educational benefits for children displaced from their school districts, or transportation benefits for residents required to move from the closed park.

The Court affirmed the district court's order denying appellants' request for those forms of equitable relief that affected marketable title, but reversed that portion of the order determining that no other forms of equitable relief were available.

The Court also found that, even if appellants had shown they had a property interest in their right of first refusal, they failed to identify some state action that interfered with their protected property interest in order to show a violation of their due-process rights under the United States and Minnesota Constitutions.

Finally, the Court rejected appellants' argument that, even if they no longer had a right of first refusal under Minn. Stat. § 327C.095, subd. 6, they nevertheless had a right to purchase the property from The Village after another notice under subdivision 7. Subdivision 7 applies only when the decision to close or convert is made after the sale.

Affirmed in part, reversed in part, and remanded.

LEGISLATION

Arizona

Affidavit of affixture - Administration

2017 AZ S 1218. Enacted 5/22/2017. Effective 8/9/2017.

Parts of this bill are included under Communities, Installation, Licensing, and Sales.

The bill changes references to the Arizona Department of Housing from the office of manufactured housing.

Ariz. Rev. Stat. Ann. § 41-3953, Department powers and duties, has been amended to provide that the Department of Housing is responsible for maintaining and enforcing standards of quality and safety for manufactured homes, mobile homes and factory-built buildings.

The bill provides that, under the direction of the director, the department shall maintain and enforce standards of quality and safety for manufactured homes, mobile homes and factory-built buildings and enforce rules adopted by the Manufactured Housing Board pursuant to Ariz. Rev. Stat. Ann. § 41-4010.

Under the direction of the director, the department may provide staff support to the board of manufactured housing.

The bill provides that the department has the administrative responsibility through its hearing officer function concerning alleged violations of the Arizona Mobile Home Parks Residential Landlord And Tenant Act under title 33, chapter 11.

The department shall act consistently with the minimum standards of the United States Department of Housing and Urban Development as so to be designated the "state inspector" for manufactured homes and related industries. The department shall implement all existing laws and regulations established by the federal government, its agencies and the state for that purpose.

LEGISLATION

Colorado

Rent increase – Notice to quit

2017 CO S 245. Enacted 6/5/2017. Effective 8/9/2017.

Under Part 7, Article 12 of Title 38, Notice Of Rent Increase, this bill adds Colo. Rev. Stat. § 38-12-701, Tenancies of one month or longer but less than six months, to provide that, notwithstanding any other provision of law, in a tenancy of one month or longer but less than six months where there is no written agreement between the landlord and tenant, a landlord may increase the rent only upon at least twenty-one days' notice to the tenant.

The bill also amends Colo. Rev. Stat. § 13-40-107, Notice to quit, to provide that a tenancy of one month or longer but less than six months may be terminated by notice in writing, served not less twenty-one (formerly, 7) days before the end of the applicable tenancy.

LEGISLATION
Connecticut
Death of tenant

2017 CT S 923. Enacted 6/6/2017. Effective 10/1/2017.

This bill amends Conn. Gen. Stat. § 47a-11d to modify the process by which a landlord may regain possession of a rental unit, without an eviction action, after the death of a sole tenant who lived in the unit.

LEGISLATION
Indiana
Requests for assistance – Occupancy – Land Use

2017 IN S 558. Enacted 5/2/2017. Effective as noted.

Effective 7/1/2017, this bill adds Ind. Code § 32-31-1-22 to provide that except as provided below, a political subdivision may not adopt or enforce any ordinance, rule, or regulation that imposes a penalty, or allows for the imposition of a penalty, against a tenant, an owner, or a landlord for a contact made to request law enforcement assistance or other emergency assistance for one (1) or more rental units if specified conditions exist.

This does not prohibit a political subdivision from adopting or enforcing an ordinance, a rule, or a regulation that imposes a penalty for a contact that:

(1) is made to request law enforcement assistance or other emergency assistance; and

(2) is not made by or on behalf of:

(A) a victim or potential victim of abuse;

(B) a victim or potential victim of a crime; or

(C) an individual in an emergency.

If a political subdivision:

(1) imposes a penalty under an ordinance, a rule, or a regulation authorized above; and

(2) the prohibited contact to request law enforcement assistance or other emergency assistance is made by a tenant in a rental unit;

the penalty imposed must be assessed against the tenant of the rental unit and not against the landlord or owner of the rental unit.

Any penalty that is assessed under an ordinance, a rule, or a regulation authorized above may not exceed two hundred fifty dollars ($250).

Nothing in this section shall be construed to prevent an attorney representing a city, county, or town from bringing a nuisance action described under IC 32-30-6-7(b) against a landlord or owner of a rental unit.

Also effective 7/1/2017, the bill adds Ind. Code § 32-31-8-7 to provide that the residential landlord-tenant statute (as defined in IC 32-31-2.9-2) does not prohibit an owner or a landlord from refusing to rent a rental unit on the basis of a reasonable occupancy standard.

For purposes of this section, an occupancy standard is presumed reasonable if:

(1) it permits two (2) individuals per bedroom; and

(2) the owner or landlord:

(A) does not include infants less than one (1) year of age in the individuals per bedroom count under subdivision (1); and

(B) increases the number of individuals per unit by considering whether the configuration of a unit includes a:

(i) den;

(ii) library;

(iii) finished basement; or

(iv) loft;

that could reasonably be used as a sleeping area, unless doing so would violate applicable state and local codes, including fire codes.

An owner or landlord is not required to consider a kitchen, dining room, living room, bathroom, hallway, or closet as a sleeping area.

Retroactive to 1/1/2017, the bill adds Ind. Code § 36-1-24.2 to provide that a county or municipality may not adopt or enforce a land use or planning ordinance or regulation that would have the effect of:

(1) controlling the amount of rent charged or the purchase price agreed upon for a transaction pertaining to the lease or purchase of privately owned residential or commercial real property; or

(2) requiring real property to be designated or reserved for lease or sale to a group of occupants, owners, or residents classified by income or assets.

A county or municipality may not require an owner of privately owned real property to agree to:

(1) a requirement that would have an effect described in section 1(1) or 1(2) of this chapter; or

(2) the payment of a fee, in lieu of a requirement described in section 1(1) or 1(2) of this chapter, as a prerequisite to the approval or consideration of:

(A) any building or land use permit;

(B) any land use petition including, but not limited to, variances, special exceptions, conditional use permits, zoning ordinances, or rezoning ordinances; or

(C) any primary, secondary, or revised plats.

This chapter does not impair the right of a county or municipality to:

(1) manage or control the development of commercial or residential real property in which the county or municipality has an ownership interest; or

(2) enact, enforce, or maintain a general land use regulation or zoning ordinance that does not have an effect described in section 1(1) or 1(2) of this chapter.

This chapter does not impair the right of an owner to voluntarily agree to a requirement that would have an effect described in section 1(1) or 1(2) of this chapter in exchange for incentives or grants provided by the county or municipality to the owner of the privately owned real property.

Also retroactive to 1/1/2017, the bill adds Ind. Code § 36-7-2-11 to provide that any:

(1) land use ordinance or regulation;

(2) general or specific planning ordinance or regulation; or

(3) land use petition (as described in IC 36-1-24.2-2) conditioned upon the:

(A) payment of a fee; or

(B) assumption of a requirement described in IC 36-1-24.2-1(1) or IC 36-1-24.2-1(2);

that is adopted by a county or municipality after December 31, 2016, and that violates IC 36-1-24.2 is void.

PROPOSED RULE

Kentucky

Submetering

This rule would amend 401 Ky. Admin. Regs. 8:010 to provide that "Submeter" means the use by a property owner or operator of meters that measure water used by tenants for the purpose of passing costs charged by a public water system from the property owner or operator to tenants based on tenants' actual water usage.

PROPOSED RULE
Kentucky
Submetering

This rule would amend 401 Ky. Admin. Regs. 8:020 to provide that a property using submeters shall not be considered a public water system as defined by 40 C.F.R. 141.2 and, except for this administrative regulation, shall be exempt from the requirements of 401 KAR Chapter 8.

A property using submeters and exempt from the requirements of 401 KAR Chapter 8 shall:

1. Receive all of its water from a public water system and shall not change the quality of water provided to customers;

2. Be located on property owned by a single person, entity, individual, or a co-op or condominium association of property owners;

3. Not be regulated as a water utility by the Kentucky Public Service Commission; and

4. Not charge tenants an amount that exceeds tenants' share of the actual amount charged by the public water system to the owner or operator of a property using a submetered system, based on the tenants' actual water usage in proportion to the total amount of water used for the entire submetered property.

The owner or operator of a property using a submetered system shall designate a person or organization as the owner or operator of the submetered system and shall provide the name, address, and phone number of the designated owner or operator upon request by the cabinet.

The owner or operator of a property using a submetered system shall certify to the cabinet in writing that the:

1. Submetered system does not have any cross connections; and

2. Applicable provisions of 815 KAR 20:120 have been met.

An advisory received by the owner or operator pursuant to Section 3(9) of this administrative regulation shall be disseminated to property tenants in the manner established in Section 3(10) of this administrative regulation.

Public notices and consumer confidence reports received by the owner or operator pursuant to 401 KAR 8:075 shall be disseminated to property tenants in the next billing period.

The rule provides that the monthly operating report of the supplier of water must include, among other things, the average number of hours per day water is being treated.

The rule adds that the public water system shall submit to the cabinet a completed Annual Water System Data form, DOW0801, (April 2017) not later than January 10 of each year.

The rule provide that the operation and maintenance manual kept by each public water system must include, among other things, procedures for issuing a boil water advisory and consumer advisory as established in this administrative regulation, including notification to the public and local health department and consumers.

The rule also provides that each community water system shall establish and maintain a flushing program that ensures:

(a) Dead end and low usage mains are flushed periodically;

(b) Drinking water standards are met; and

(c) Sediment and air removal and disinfectant residuals established in 401 KAR 8:150, Section 1 are maintained.

The rule deletes the requirement that a distribution system may be thoroughly flushed at least twice a year, usually in the spring and fall.

LEGISLATION
Maine
Termination

2017 ME S 55. Enacted 5/30/2017. Effective 9/19/2017 (projected).

This bill amends Me. Stat. tit. 14, § 6002 to add that, notwithstanding any other provisions of this chapter, a tenancy of buildings erected on land of another party may be terminated upon 7 days' written notice in the event that the landlord can show, by affirmative proof, that:

E. The tenant or the tenant's guest or invitee is the perpetrator of violence, a threat of violence or sexual assault against another tenant, a tenant's guest, the landlord or the landlord's employee or agent, except that this paragraph does not apply to a tenant who is a victim as defined in section 6000, subsection 4 and who has taken reasonable action under the circumstances to comply with the landlord's request for protection of the tenant, another tenant, a tenant's guest or invitee, the landlord or the landlord's employee or agent or of the landlord's property; or

F. The person occupying the premises is not an authorized occupant of the premises.

LEGISLATION
Maine
Assistance animals – Landlord liability

2017 ME H 154. Enacted 5/11/2017. Effective 9/19/2017 (projected).

This bill amends Me. Stat. tit. 14, § 6030-G, Injuries or property damage involving an assistance animal, to provide that the owner, lessor, sublessor, managing agent or other person having the right to sell, rent, lease or manage a dwelling unit or any of their agents is not liable in a civil action for personal injury, death, property damage or other damages resulting from or arising out of an occurrence involving an assistance animal at the dwelling unit.

Exceptions: the above does not limit the liability of the owner, lessor, sublessor, managing agent or other person having the right to sell, rent, lease or manage a dwelling unit or any of their agents:

A. In cases of gross negligence, recklessness or intentional misconduct on the part of the owner, lessor, sublessor, managing agent or other person having the right to sell, rent, lease or manage a dwelling unit or any of their agents; or

B. When the assistance animal is owned by or in the care of the owner, lessor, sublessor, managing agent or other person having the right to sell, rent, lease or manage a dwelling unit or any of their agents.

LEGISLATION
Maryland
Servicemembers – Change of assignment

2017 MD H 851 and 2017 MD S 49. Enacted 5/25/2017. Effective 10/1/2017.

These bills amend Md. Code Ann., Real Prop. § 8-212.1 to add the definition of "change of assignment" to provide that the term includes:

(1) permanent change of station orders;

(2) temporary duty orders for a period exceeding 90 days;

(3) orders requiring a person to move into quarters located on a military installation; and

(4) a release from active duty, including:

(i) retirement;

(ii) separation or discharge under honorable conditions; and

(iii) demobilization of an activated reservist or a member of the national guard who was serving on active duty orders for at least 180 consecutive days.

The bills provide that, notwithstanding any other provision of this title, if a person who is on active duty with the United States military, or the person's spouse (adding, "or the person's spouse"), enters into a residential lease of property and the person subsequently receives a change of assignment, before or after occupying the property (formerly, "permanent change of station orders or temporary duty orders for a period in excess of 3 months"), any liability of the person, or the person's spouse (adding, "or the person's spouse"), for rent under the lease may not exceed:

(1) any rent or lawful charges then due and payable plus 30 days' rent after written notice and proof of the change of assignment is given to the landlord (adding, "any rent or lawful charges then due and payable plus"); and

(2) the cost of repairing damage to the premises caused by an act or omission of the tenant.

LEGISLATION
Minnesota
Property taxes - Classification

2017 MN H 1 a. Enacted 5/30/2017. Effective beginning with assessment year 2018.

This bill amends Minn. Code § 273.13, subdivision 25, re: property taxes, to add that class I manufactured home parks as defined in section 327C.01, subdivision 13 (see 2017 MN S 1456, below), have a classification rate of 1.0 percent.

LEGISLATION
Minnesota
Classification – Redevelopment program

2017 MN S 1456. Enacted 5/30/2017. Effective 5/31/2017.

This bill amends Minn. Stat. § 327C.01, by adding a subdivision to read:

Subd. 13. Class I manufactured home park. A "class I manufactured home park" means a park that complies with the provisions of section 327C.16.

The bill also adds Minn. Stat. § 327C.16, CLASS I MANUFACTURED HOME PARK, to provide as follows:

Subdivision 1. Qualifications. (a) To qualify as a class I manufactured home park, as defined in section 327C.01, subdivision 13, a park owner, or on-site attendant as an employee of the manufactured home park, must satisfy 12 hours of qualifying education courses every three years, as prescribed in this subdivision. Park owners or on-site attendants may begin accumulating qualifying hours to qualify as a class I manufactured home park beginning in 2017.

(b) The qualifying education courses required for classification under this subdivision must be continuing education courses approved by the Department of Labor and Industry or the Department of Commerce for:

(1) continuing education in real estate; or

(2) continuing education for residential contractors and manufactured home installers.

(c) The qualifying education courses must include:

(1) two hours on fair housing, approved for real estate licensure or residential contractor licensure;

(2) one hour on the Americans with Disabilities Act, approved for real estate licensure or residential contractor licensure;

(3) four hours on legal compliance related to any of the following: landlord/tenant, licensing requirements, or home financing under chapters 58, 327, 327B, 327C, and 504B, and Minnesota Rules, chapter 1350 or 4630;

(4) three hours of general education approved for real estate, residential contractors, or manufactured home installers; and

(5) two hours of HUD-specific manufactured home installer courses as required under section 327B.041.

(d) If the qualifying owner or employee attendant is no longer the person meeting the requirements under this subdivision, but did qualify during the current assessment year, then the manufactured home park shall still qualify for the class rate provided for class 4c property classified under section 273.13, subdivision 25, paragraph (d), clause (5), item (iii).

Subd. 2. Proof of compliance. (a) A park owner that has met the requirements of subdivision 1 shall provide an affidavit to the park owner's county assessor certifying that the park owner, corporate officer, or on-site attendant has complied with subdivision 1 and that the park meets the definition of a class I manufactured home park as defined in this section, and is entitled to the property tax classification rate for class I manufactured home parks in section 273.13, subdivision 25. The park owner shall retain the original course completion certificates issued by the course sponsor under this section for three years and, upon written request for verification, provide these to the county assessor within 30 days.

(b) A park owner must provide the county assessor written notice of any change in compliance status of the manufactured home park no later than December 15 of the assessment year.

The bill amends Minn. Stat. §462A.2035, MANUFACTURED HOME PARK REDEVELOPMENT PROGRAM, to add Subd. 1b, Park infrastructure grants, providing that eligible recipients may use park infrastructure grants under this program for:

(1) improvements in manufactured home parks; and

(2) infrastructure, including storm shelters and community facilities.

Subd. 4, Infrastructure repair and replacement fund, provides that each recipient receiving a grant under subdivision 1b shall provide from year to year, on a cumulative basis, for adequate reserve funds to cover the repair and replacement of the private infrastructure systems serving the community.

PROPOSED RULE
Missouri
Inspection form

This rule would amend Mo. Code Regs. Ann. tit. 2, § 90-10.013 to provide that, prior to new construction, major renovations, or additions to mobile home parks, form MPSC-0910 (formerly, MPGC-0910) must be completed and submitted to the inspection authority.

LEGISLATION
Montana
Electronic notification

2017 MT S 144. Enacted 5/4/2017. Effective 10/1/2017.

This bill revises the Residential Landlord and Tenant Laws by amending Mont. Code Ann. § 70-24-108, What constitutes notice, to provide that a person has notice of a fact if, in the case of a tenant or a landlord, it is transmitted to an electronic mail address provided by the tenant or the landlord in the rental agreement. Notice by electronic mail is complete on receipt of a read receipt generated by an electronic mail system or an electronic mail reply other than an automatically generated electronic mail reply.

The bill amends Mont. Code Ann. § 70-24-202, Prohibited provisions in rental agreements, to provide that a rental agreement may not provide that a party must provide an electronic mail address as a condition of entering into the agreement. However, a party may voluntarily provide an electronic mail address if the agreement contains a provision allowing a party to elect to receive notice by electronic mail.

This act applies to rental agreements entered into, extended, or renewed on or after the effective date of the act.

LEGISLATION

Nevada

Requests for assistance

2017 NV A 133. Enacted 5/22/2017. Effective 7/1/2017.

This bill adds a new section to Nev. Rev. Stat. Chapter 118A to provide that a landlord shall not take any adverse action against a tenant, including, without limitation, evicting, imposing a fine or taking any other punitive action against the tenant, based solely upon the tenant or another person in the dwelling of the tenant requesting emergency assistance if the tenant or other person had a reasonable belief that an emergency response was necessary or that criminal activity may have occurred, regardless of any other previous requests for emergency assistance by the tenant or other person.

A local government or other political subdivision of Nevada shall not deem there to be a nuisance or take any other adverse action against the landlord of a dwelling based solely upon the tenant or another person in the dwelling of the tenant requesting emergency assistance in accordance with the above.

This section does not:

(a) Prohibit a landlord from taking any action necessary to abate a nuisance on the property or taking any other action which is not in conflict with the provisions of this section, including, without limitation, commencing eviction proceedings in accordance with the provisions of chapter 40 of NRS for any nuisance discovered by or reported to the landlord by a peace officer as a result of a request for emergency assistance pursuant to the above;

(b) Authorize a tenant to breach any provision of a rental agreement that is not in conflict with this section or to violate any other provision of law;

(c) Prohibit a landlord from taking any action necessary to cure a breach of any provision of a rental agreement or any other provision of law by a tenant which is discovered by or reported to the landlord by a peace officer as a result of a request for emergency assistance pursuant to the above; or

(d) Prohibit a local government or other political subdivision of Nevada from taking any action against a landlord or a tenant to abate a nuisance or a violation of any local law, ordinance or regulation which is discovered by a peace officer while responding to a request for emergency assistance pursuant to the above.

In addition to any other remedies, a tenant, landlord or district attorney may bring a civil action in a court of competent jurisdiction for a violation of this section to seek any or all of the following relief:

(a) Declaratory and injunctive relief.

(b) Actual damages.

(c) Reasonable attorney's fees and costs.

(d) Any other legal or equitable relief that the court deems appropriate.

As used in this section:

(a) "Emergency assistance" means assistance provided by an agency of the State of Nevada or a political subdivision of this State that provides police, fire-fighting, rescue, emergency medical services or any other services related to public safety.

(b) "Peace officer" means any person upon whom some or all of the powers of a peace officer are conferred pursuant to NRS 289.150 to 289.360, inclusive.

The bill adds another new section with similar provisions to the same chapter to refer specifically to tenants and landlords of a manufactured home.

The bill also amends Nev. Rev. Stat. § 40.140 to provide that a request for emergency assistance by a tenant as described in these two new sections does not constitute a nuisance.

Similarly, Nev. Rev. Stat. § 202.450 has been amended to provide that a request for emergency assistance by a tenant as described in these two new sections is not a public nuisance.

LEGISLATION
Nevada
Evictions - Sealing

2017 NV A 107. Enacted 5/22/2017. Effective 10/1/2017.

This bill amends Nev. Rev. Stat. by adding a new section to Chapter 31 to provide that eviction case court files relating to actions for summary eviction are sealed automatically and not open to inspection: (1) upon the entry of a court order denying or dismissing the action for summary eviction; or (2) if a landlord fails to file an affidavit of complaint within 30 days after a tenant files an affidavit to contest the matter.

The bill also authorizes the court to seal an eviction case court file: (1) upon a written stipulation between the landlord and the tenant; or (2) upon motion by the tenant, if the court finds that the eviction should be set aside pursuant to the Justice Court Rules of Civil Procedure or that sealing the eviction case court file is in the interests of justice.

LEGISLATION
Nevada
Forcible entry – Unauthorized residence

2017 NV A 161. Enacted 6/4/2017. Effective 7/1/2017.

This bill amends Nev. Rev. Stat. § 205.0813 to provide that a person is presumed to know that a forcible entry of an uninhabited or vacant dwelling is without the permission of the owner of the dwelling or an authorized representative of the owner unless the person provides a written rental agreement that:

(a) Is notarized or is signed by an authorized agent of the owner who at the time of signing holds a permit to engage in property management pursuant to chapter 645 of NRS; and

(b) Includes the current address and telephone number of the owner or his or her authorized representative.

The bill similarly amends Nev. Rev. Stat. § 205.0817 to provide that a person who takes up residence in an uninhabited or vacant dwelling is presumed to know that the residency is without the permission of the owner of the dwelling or an authorized representative of the owner unless the person provides a written rental agreement that:

(a) Is notarized or is signed by an authorized agent of the owner who at the time of signing holds a permit to engage in property management pursuant to chapter 645 of NRS; and

(b) Includes the current address and telephone number of the owner or his or her authorized representative.

LEGISLATION
Nevada
Harassment - Sexual assault - Stalking

2017 NV A 247. Enacted 5/24/2017. Effective 10/1/2017.

This bill amends Nev. Rev. Stat. § 118A.345 to provide that, notwithstanding any provision in a rental agreement to the contrary, if a tenant, cotenant or household member is the victim of domestic violence, harassment, sexual assault or stalking (adding, harassment, sexual assault or stalking), the tenant or any cotenant may terminate the rental agreement by giving the landlord written notice of termination effective at the end of the current rental period or 30 days after the notice is provided to the landlord, whichever occurs sooner.

The bill adds that, in the case of a termination of a rental agreement pursuant to this section on the grounds that a tenant, cotenant or household member is a victim of harassment, sexual assault or stalking, the written notice provided to a landlord must describe the reason for the termination of the rental agreement and be accompanied by:

(a) A copy of a written report from a law enforcement agency indicating that the tenant, cotenant or household member notified the law enforcement agency of the harassment, sexual assault or stalking, as applicable; or

(b) A copy of a temporary or extended order issued pursuant to NRS 200.378 or 200.591, as applicable.

LEGISLATION
Nevada
Discrimination

2017 NV S 188. Enacted 5/27/2017. Effective 7/1/2017.

This bill revises existing provisions that prohibit various types of discrimination to include discrimination on the basis of sexual orientation and gender identity or expression.

PENDING LEGISLATION
New York
Lease to own

2017 NY S 6177. Introduced 5/11/2017.

McGlinchey Stafford's Marc J. Lifset helped with the drafting of this bill, to regulate lease to own contracts in manufactured home communities.

The bill provides that no manufactured home park owner or operator shall offer a lease to own contract unless the manufactured home park owner or operator has the required documents of ownership including a certificate of title to the home, if the home is a manufactured home subject to being titled pursuant to article forty-six of the vehicle and traffic law, or for mobile homes not subject to being titled pursuant to such article, such other documentation, which may include a bill of sale, sufficient to establish ownership of the home.

Every lease to own contract, whether as a part of a lease, or as a separate document, shall be in writing and clearly state all terms governing the transaction. The bill specifies terms required to be separately stated.

Until such time as ownership of the home passes to the manufactured home tenant, manufactured homes under a lease to own contract shall be deemed to be rented homes.

LEGISLATION
North Carolina
Water and sewer service

2017 NC S 131. Enacted 5/4/2017. Effective immediately.

This bill amends provisions regarding water and sewer billing by lessors by amending N.C. Gen. Stat. § 42-42.1 to provide that, for the purpose of encouraging water and electricity conservation, pursuant to a written rental agreement, a landlord may charge for the cost of providing water or sewer service to tenants pursuant to G.S. 62-110(g) or electric service pursuant to G.S. 62-110(h) (formerly, this referred to tenants who occupy the same contiguous premises).

The bill also amends N.C. Gen. Stat § 62-110(g) to add that the Commission shall develop an application that lessors must submit for authority to charge for water or sewer service at single‑family homes that allows the applicant to serve multiple homes in the State subject to single Commission approval. The form shall include all of the following:

a. A description of the applicant and a listing of the address of all the properties to be served, which shall be updated annually with the Commission.

b. A description of the proposed billing method and billing statements.

c. The administrative fee proposed to be charged by the applicant.

d. The name and contact information for the applicant and its agents.

e. Any additional information the Commission may require.

ADOPTED RULE
Ohio
Licensing - Inspections

Effective 6/16/2017, this adopted rule rescinds Ohio Admin. Code 3701-27-01, -02, -03, -04, -04.1, -04.2, -04.3, -05, -06, -06.1, -07, -07.1, -07.2, -07.3, -07.4, -07.5, -08, -08.1, -08.2, -08.3, -09, -10, -12, -13, -14, governing the licensing and inspections of manufactured home parks.

ADOPTED RULE
Ohio
Licensing - Inspections

Effective 6/16/2017, this adopted rule rescinds Ohio Admin. Code 3701-27-15, -16, -17, -18, -19, -20, -24, -25, -26, -27, -28, -29, -30, governing the licensing and inspections of manufactured home parks.

LEGISLATION
Oregon
Death of resident

2017 OR H 2359. Enacted 5/25/2017. Effective 1/1/2018.

This bill amends Or. Rev. Stat. § 114.005 to provide that, (1) except as otherwise provided, the spouse and dependent children of a decedent occupying the principal dwelling of the decedent at the time of the decedent's death (adding, "occupying the principal dwelling of the decedent at the time of the decedent's death"), or any of them, may continue to occupy the dwelling until formerly, "the principal place of abode of the decedent"):

(a) One year after the death of the decedent; or,

(b) If the decedent's interest in the dwelling is a leasehold or otherwise less than a fee interest (formerly, "estate therein is an estate of leasehold or an estate for the lifetime of another"), until one year after the death of the decedent or the earlier termination of the interest (formerly, "estate").

(2) During an occupancy under subsection (1) of this section:

(a) The occupants may not commit or permit waste to the dwelling (formerly, "abode"), or cause or permit construction liens (formerly, "mechanic's or materialman's") or other liens to attach to the dwelling.

(b) The occupants shall pay the cost to keep the dwelling (formerly, "abode") insured, to the extent of the fair market value of the improvements, against fire and other hazards within the extended coverage provided by fire insurance policies, with loss payable to the estate (adding, "with loss payable to the estate"). (Deletes: "In the event of loss or damage from those hazards, to the extent of the proceeds of the insurance, they shall restore the abode to its former condition.").

(c) The occupants shall pay taxes and improvement liens on the dwelling (formerly, "abode") as payment of the liens becomes due.

(d) The dwelling (formerly, "abode") is exempt from execution to the extent that it the dwelling was exempt when the decedent was living.

The bill adds new subsection (e) to provide that the dwelling is subject to the rights of persons having a security interest in the dwelling.

For good cause shown, the court may waive or alter the provisions of subsection (1) of this section.

LEGISLATION

Texas

Utility costs

2017 TX S 873. Enacted 6/1/2017. Effective 6/1/2017.

This bill amends Tex. Water Code Ann. § 13.501 to provide that "owner" means the legal titleholder of an apartment house, manufactured home rental community, or multiple use facility and any individual, firm, or corporation expressly identified in a lease agreement as (formerly, "that purports to be") the landlord of tenants in the apartment house, manufactured home rental community, or multiple use facility.

The bill adds that "utility costs" or "utility service costs" means any amount charged to the owner by a retail public utility for water or wastewater service.

The bill also adds subsection (f) to Tex. Water Code Ann. § 13.503 to provide that the section does not limit the authority of an owner, operator, or manager of an apartment house, manufactured home rental community, or multiple use facility to charge, bill for, or collect rent, an assessment, an administrative fee, a fee relating to the upkeep or management of chilled water, boiler, heating, ventilation, air conditioning, or other building system, or any other amount that is unrelated to utility costs.

The bill adds subsection (b) to Tex. Water Code Ann. § 13.5031 to provide that the section does not limit the authority of an owner, operator, or manager of an apartment house, manufactured home rental community, or multiple use facility to charge, bill for, or collect rent, an assessment, an administrative fee, a fee relating to the upkeep or management of chilled water, boiler, heating, ventilation, air conditioning, or other building system, or any other amount that is unrelated to utility costs.

The bill amends Tex. Water Code Ann. § 13.505, RESTITUTION (formerly, ENFORCEMENT), to add that, in this section, "overcharge" means the amount, if any, a tenant is charged for submetered or nonsubmetered master metered utility service to the tenant's dwelling unit after a violation occurred relating to the assessment of a portion of utility costs in excess of the amount the tenant would have been charged under this subchapter.

The utility commission has exclusive jurisdiction for violations under this subchapter.

If an apartment house owner, condominium manager, manufactured home rental community owner, or other multiple use facility owner violates a rule of the utility commission regarding utility costs, the person claiming the violation may file a complaint with the utility commission. The utility commission and State Office of Administrative Hearings shall establish an online and telephone formal complaint and hearing system through which a person may file a complaint under this subchapter and may appear remotely for a hearing before the utility commission or the State Office of Administrative Hearings. If the utility commission determines that the owner or condominium manager overcharged a complaining tenant for water or wastewater service from the retail public utility, the utility commission shall require the owner or condominium manager, as applicable, to repay the complaining tenant the amount overcharged.

Nothing in this section limits or impairs the utility commission's enforcement authority under Subchapter K. The utility commission may assess an administrative penalty under Section 13.4151 for a violation of this chapter or of any rule adopted under this chapter.

Formerly, this section provided that, in addition to the enforcement provisions contained in Subchapter K, if an apartment house owner, condominium manager, manufactured home rental community owner, or other multiple use facility owner violates a rule of the utility commission regarding submetering of utility service consumed exclusively within the tenant's dwelling unit or multiple use facility unit or nonsubmetered master metered utility costs, the tenant may recover three times the amount of any overcharge, a civil penalty equal to one month's rent, reasonable attorney's fees, and court costs from the owner or condominium manager. However, an owner of an apartment house, manufactured home rental community, or other multiple use facility or condominium manager is not liable for a civil penalty if the owner or condominium manager proves the violation was a good faith, unintentional mistake.

LEGISLATION

Texas

Request for assistance

2017 TX H 1099. Enacted 6/1/2017. Effective 9/1/2017.

This bill amends Tex. Prop. Code Ann. § 92.015 to provide that a landlord may not:

(1) prohibit or limit a residential tenant's right to summon police or other emergency assistance based on the tenant's reasonable belief that an individual is in need of intervention or emergency assistance (formerly, “in response to family violence”); or

(2) impose monetary or other penalties on a tenant who summons police or emergency assistance if the assistance was requested or dispatched based on the tenant's reasonable belief that an individual was in need of intervention or emergency assistance (formerly, “in response to family violence”).

A provision in a lease is void if the provision purports to:

(1) waive a tenant's right to summon police or other emergency assistance based on the tenant's reasonable belief that an individual is in need of intervention or emergency assistance (formerly, “in response to family violence”); or

(2) exempt any party from a liability or a duty under this section.

The provisions of the bill apply only to a lease entered into or renewed on or after the effective date of the Act. A lease entered into or renewed before the effective date of the Act is governed by the law as it existed immediately before the effective date of the Act, and that law is continued in effect for that purpose.

LEGISLATION

Vermont

Town of Berlin – Park ordinances

2017 VT H 356. Enacted 5/22/2017. Effective 7/1/2017.

This bill approves amendments to the charter of the Town of Berlin to provide that the town may adopt and enforce ordinances for the purpose of regulating, licensing, and fixing reasonable and necessary license fees for mobile home parks.

DEFAULT SERVICING

CASE LAW

Bankruptcy – Release of lien

CASE NAME: *In re Fierke*
DATE: *05/03/2017*
CITATION: *United States Bankruptcy Court, W.D. Michigan. --- B.R. ----. 2017 WL 1740355*

Under the Debtor's Chapter 13 plan, the parties agreed that 21st Mortgage was obligated to "release its lien and provide evidence and/or documentation of such release within 30 days ..." after entry of the Order of Discharge.

Fierke intended to sell the manufactured home promptly after the conclusion of his Chapter 13 case, and had scheduled a closing for March 15, 2017. To facilitate the sale, and before the expiration of the 30-day deadline for releasing the lien, Fierke's counsel asked the lender to release its security interest, but without success. The parties agree that 21st Mortgage did not release its security interest by the February 23, 2017 deadline under the plan. They also agree that Fierke's counsel again contacted the lender on February 27, 2017, reiterating the request. When the lender failed to release the lien as required, Fierke filed a motion for sanctions against 21st Mortgage on March 7, 2017, seeking damages in the amount of $435.00 (representing additional rent allegedly incurred because of the lender's delay in releasing the lien) and $500.00 (for attorney's fees). Three days later (and before the March 15 closing), 21st Mortgage released its lien.

The Bankruptcy Court held that, while sluggishness on part of a lender in not promptly releasing its lien within 30 days of completion of debtor's plan payments and entry of a discharge order, as it was required to do by terms of the confirmed plan, was not to be condoned, it did not smack of bad faith, and did not warrant the award of sanctions.

CASE LAW

Bankruptcy – Secured claim

CASE NAME: *In re Martin*
DATE: *05/05/2017*
CITATION: *United States Bankruptcy Court, N.D. Mississippi. Slip Copy. 2017 WL 1839163*

The Debtors filed a Chapter 13 and their plan was confirmed by order of the Court. The Debtors' obligation to Sycamore Bank stemmed from a promissory note payable to the Bank, secured by the Debtors' mobile home and a deed of trust on the land on which the mobile home was located. The Bank was treated as a secured creditor under the plan. The Debtors paid the Bank through their plan, eventually bringing the Bank current as of the date of the original closing of the case. The Bank's debt was a long-term debt contemplated by § 1322(b)(5), so it was not paid in full. Although the Debtors were to bring the Bank current by the end of the

plan term (which they did), the remainder of the debt would be paid as and when due under the terms of the loan documents.

After the closing of the bankruptcy case, the Debtors defaulted on their obligations to the Bank, and the Bank foreclosed on its collateral. After the foreclosure sale, there was an unsecured deficiency balance of $24,875.65. The parties agreed that because the Bank's claim was treated as a long-term debt under § 1322(b)(5), this unsecured deficiency balance was not discharged in the Chapter 13 case.

The Court subsequently reopened the case on the Trustee's request in order to administer settlement proceeds received by debtor Angela Martin. The Bank argued that it should participate pro rata in the distribution of the proceeds of the settlement to unsecured creditors, as its remaining claim was no longer secured. The Bank agreed that if it shared in the distribution, the remainder of its unsecured claim would be deemed discharged.

According to the Court, there was no dispute that if the Trustee had received the proceeds during the original pendency of the case, the Bank would not have been entitled to share in the distribution to unsecured creditors. The Bank did not have an unsecured claim against the Debtors until after the case was discharged and closed. The Bank was scheduled and treated as fully secured through the plan, and it received everything it was entitled to receive under the plan. While the Debtors still owed any deficiency balance remaining under the terms of the original note and security agreement with the Bank, subsequent events could not change the character of the Bank's claim within the bankruptcy case.

At all times during the pendency of the bankruptcy case, from the filing of the petition, through confirmation, completion of the plan payments, and discharge, the Bank maintained a secured claim. The Debtors' obligations to the Bank were not discharged upon entry of the discharge order in this case. The Bank was free to seek collection of its unsecured claim from the Debtors. The other, discharged, unsecured creditors could not, and the proceeds were the only recovery those creditors would receive.

The Court found that the Bank was not entitled to participate in the proposed distribution to unsecured creditors.

CASE LAW

Partition – Sale of home

CASE NAME: *Simon v. Underwood*
DATE: *05/19/2017*
CITATION: *Court of Appeals of Ohio, Second District, Champaign County. Slip Copy. 2017 WL 2223055*

Brothers Jay and John Underwood appealed from the decision of the trial court overruling their objections to the report of the Commissioner, which concluded that property devised by their father's Last Will and Testament to them and their sisters as life-tenants-in-common, could not be equitably partitioned between the four siblings.

One of the issues on appeal was the trial court's finding that a manufactured home on one of the parcels was a fixture.

The Brothers contended that the manufactured home was the personal property of John Underwood and should not have been included in the calculation of the Property's value. As support, they presented the certificate of title and the current tax bill for the home.

According to the trial court, a manufactured home is generally considered personal property, unless it is affixed to real property. Once a manufactured home is affixed to real property, Ohio law treats it as part of the real estate. Three elements must be shown before a chattel will be considered a fixture: (1) the chattel must

be annexed to the realty to some extent; (2) the chattel must be appropriate for the purpose of the realty to which it is attached; and (3) the party making the annexation must intend to make the chattel a permanent part of the realty.

The tax classification of a manufactured home does not control whether it is or is not a fixture. Surrender of the certificate of title is not a necessary prerequisite to a valid fixture being created in the home. Ohio law distinguishes between classification for tax purposes and common law fixture analysis.

The Court found that the record contained ample evidence that John Underwood intended to make the home a permanent part of the property. The Commissioner testified that mobile home sat on a permanent foundation. The Commissioner's report also mentioned that an addition had been made to the home. John Underwood confirmed that the home was affixed to the foundation with hurricane straps and that its wheels had been removed. He also testified that he purchased the home in 1982 and that he had lived in the home for at least 30 years. He also installed a new septic system in 2011 and a new well in 2012. These expenditures were further evidence of intent to make the home a permanent part of the realty.

The appeals court agreed that John intended to make the home a permanent part of the property. The Court further agreed with the trial court that the installation of the septic system and the well, which allowed the home to function as a permanent residence, further supported the conclusion that John intended to make the home a permanent part of the property, and that the septic system and well were also fixtures.

CASE LAW

Bankruptcy – Lien avoidance

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CASE NAME: *In re Gracy*
DATE: *05/24/2017*
CITATION: *United States Court of Appeals, Tenth Circuit. --- Fed.Appx. ----. 2017 WL 2274536*

Ark Valley Credit Union ("AVCU") appealed the judgment entered against it and in favor of the Trustee in an adversary proceeding in a Chapter 7 bankruptcy case. The primary issue was whether § 58-4214 of the Kansas Manufactured Home Act ("KMHA") is the exclusive means for determining whether a mobile home is a fixture for purposes of the attachment of a security interest or whether a court may also look to Kansas common law to make that determination, as the district court and bankruptcy court did in this case. The earlier cases were also reported in previous issues of the McGlinchey Stafford Manufactured Housing Law Update.

AVCU's primary argument on appeal was that compliance with the KMHA is the exclusive way to change the status of a manufactured home from personal property to a fixture. Under the KMHA, a mobile home is considered a fixture if it is permanently affixed to the real property and its title has been eliminated. Because Debtor did not eliminate the title to his mobile home, AVCU asserted that the home could not be considered a fixture.

The appeals court agreed with the district court that the statute's plain language "does not exclude common law as a means of converting a manufactured home into a fixture; it merely provides a set of conditions under which one can guarantee that a mobile home will be treated as a fixture." The Court therefore saw no reversible error in the district court's determination that the KMHA does not exclude the application of common law to determine whether a manufactured home is a fixture.

AVCU argued in the alternative that the bankruptcy court erred in finding that Debtor's manufactured home was a fixture under the common law test.

The factors for determining whether a manufactured home is personal property or a fixture are: (1) annexation to the realty; (2) adaptation to the use of that part of the realty with which it is attached; and (3) the intention of the party making the annexation. The bankruptcy court found that all of these factors were shown.

AVCU claimed that the manufactured home was not permanently affixed to the realty.

The bankruptcy court noted that the manufactured home was set on piers that were set on concrete slabs and that the home was anchored to the piers and slabs with straps but was not otherwise attached. Although the court recognized that it was plausible that the home could be removed from the ground, it also recognized that courts assess less importance to the annexation factor than they do to the other two factors.

The bankruptcy court found that the land was Debtor's homestead and that he placed his manufactured home on that land to inhabit as his homestead, which he had done for twenty years. The court noted that Debtor "surrounded the home with brick skirting, built a porch and a back patio adjacent to it, and erected a large garage just by it." The Court also noted testimony from a realtor about the value that the manufactured home added to the land if the two were sold together, which also supported the court's conclusion "that the home has been successfully adapted to the use of the realty."

As for intent, the Court concluded that it was clear that Debtor "intended to make the property as a whole his homestead when he moved the manufactured home onto the realty and subsequently made further improvements to it while he continuously lived there over the next 20 years." The court also cited to Debtor's testimony that he "considered it his permanent home" and that "he intended to encumber it along with his homestead real estate."

Affirmed.

LEGISLATION

Nevada

Servicemembers - Foreclosure

2017 NV S 33. Enacted 5/29/2017. Effective immediately.

Chapter 40 of NRS is amended by adding a new, as yet uncodified section to provide that, if a mortgagor or grantor of a deed of trust under a residential mortgage loan is a servicemember or, in certain circumstances, a dependent of a servicemember, a person is generally prohibited from initiating or directing or authorizing another person to initiate a foreclosure sale during any period the servicemember is on active duty or deployment or for a period of 1 year immediately following the end of such active duty or deployment.

In any civil action for a foreclosure sale that is filed against a servicemember or, if applicable, a dependent of a servicemember while the servicemember is on active duty or deployment or during the 1-year period immediately following the end of such active duty or deployment, the court is authorized or required, depending on the circumstances, to stay the proceedings in the action for a certain period or adjust the obligation to preserve the interests of the parties unless the court determines that the ability of the servicemember or dependent to comply with the terms of the obligation secured by the residential mortgage loan is not materially affected by the servicemember's active duty or deployment.

Any such protection against foreclosure only applies to a residential mortgage loan that was secured before the servicemember was called to active duty or deployment.

Any person who knowingly initiates or directs or authorizes another person to initiate a foreclosure sale in violation of these provisions, other than a trustee who initiates a foreclosure sale pursuant to the direction or authorization of another person, is guilty of a misdemeanor and may be liable for actual damages, reasonable attorney's fees and costs incurred by the injured party. In imposing any such liability and determining whether to reduce such liability, a court is required to take into consideration any due diligence used by the person before he or she initiated or directed or authorized another person to initiate the foreclosure sale.

Any applicable statute of limitations or period within which a servicemember is required to submit proof of service that is prescribed by state law is tolled during the period of protection provided.

INSTALLATION

LEGISLATION
Alabama
Sumter County – Sales tax

2017 AL H 547. Enacted 5/12/2017. Effective immediately.

This bill enacts new legislation, relating to Sumter County, to levy additional sales and use taxes to be used for the construction, maintenance, and operation of hospital facilities.

The bill provides that the governing body of the county is authorized to levy and impose in the county, in addition to all other taxes of every kind now imposed by law, and to collect as herein provided, a privilege or license tax against the person on account of the business activities and in the amount to be determined by the application of rates against gross sales, or gross receipts, as the case may be, as follows:

Upon every person, firm, or corporation engaged or continuing within the county in the business of selling at retail mobile home set-up materials and supplies including but not limited to steps, blocks, anchoring, cable pipes, and any other materials pertaining thereto an amount equal to one-half percent of the gross proceeds of sale of the mobile home set-up materials and supplies.

The bill also provides that the governing body of the county is authorized to levy and impose excise taxes on the storage, use or other consumption of property in the county on the storage, use or other consumption in the county of any mobile home set-up materials and supplies including but not limited to steps, blocks, anchoring, cable pipes and any other materials pertaining thereto, purchased at retail on or after the effective date of such tax, for storage, use or other consumption in the county at the rate of one-half percent of the sales price of such mobile home set-up materials and supplies as specified above, or the amount of tax collected by the seller, whichever is greater.

LEGISLATION
Alabama
Compliance certificate

2017 AZ S 1218. Enacted 5/22/2017. Effective 8/9/2017.

Parts of this bill are included under Communities, Installation, Licensing, and Sales and Titling and Perfection.

The bill amends Ariz. Rev. Stat. Ann. § 41-4001, Definitions, to add the definition of “certificate" as a numbered or serialized label or seal that is issued by the director of the department of housing as certification of compliance with Chapter 37 (Housing).

The definition of "Consummation of sale" has been amended to provide that it includes the filing of an affidavit of affixture, if applicable, to the sale.

The definition of "Factory-built building" has been amended to provide that it:

(a) Means a residential or commercial building that is:

(i) either wholly or in substantial part manufactured at an off-site location and transported for installation or completion, or both, on-site,

(ii) constructed in compliance with adopted codes, standards and procedures,

(iii) installed temporarily or permanently.

(b) does not include a manufactured home, recreational vehicle, panelized building or domestic or light commercial storage building.

The definition of "Insignia of approval" has been deleted.

The definition of "Listing agreement" has been amended to mean a document that contains the name and address of the seller, the year, manufacturer and serial number of the listed unit, the beginning and ending dates of the time period that the agreement is in force, the name of the lender and lien amount, if applicable, the price the seller is requesting for the unit, the commission to be paid to the licensee and the signatures of the sellers and the licensee who obtains the listing.

The bill amends Ariz. Rev. Stat. Ann. § 41-4004, Powers and duties of department; work by unlicensed person; inspection agreement; permit, to provide that the department shall issue a certificate (formerly, authorize affixment of insignia) to indicate compliance with the construction and installation requirements of this article.

The bill repeals Ariz. Rev. Stat. Ann. §§ 41-4021, Office of administration; purpose, which provided that the purpose of the office of administration within the Arizona department of housing is to provide the administrative services necessary to facilitate the operation of the office of manufactured housing, including procedures to ensure compliance with laws and rules relating to this office.

The bill amends Ariz. Rev. Stat. Ann. § 42-15203, Affidavit of affixture, to provide that, if an affidavit of affixture is submitted for recording on a mobile home entering the state for sale or installation, a certificate of compliance or waiver issued by the Arizona Department of Housing (formerly, the office of manufactured housing) is required and shall be submitted with the affidavit of affixture.

LEGISLATION
Indiana
Floodway – Permit fee

2017 IN H 1415. Enacted 4/26/2017. Effective 7/1/2017.

This bill amends Ind. Code § 14-28-1-26.5 to provide that to obtain a permit for the placement or replacement of a mobile home within a boundary river floodway, a person must pay a nonrefundable minimum fee of ten dollars ($10) (adding, “minimum”).

LEGISLATION
Washington
Penalties

2017 WA H 1329. Enacted 4/14/2017. Effective 7/23/2017.

This bill amends the monetary penalties imposed for infractions relating to mobile and manufactured home installation in Wash. Rev. Code § 43.22A.190.

The bill provides that a person found to have committed an infraction under this chapter may be assessed a monetary penalty of two hundred fifty dollars for the first infraction and not more than one thousand dollars for a second or subsequent infraction. The department of labor and industries shall set by rule a schedule of monetary penalties for infractions imposed under this chapter.

Formerly, this section provided that a person found to have committed an infraction under this chapter shall be assessed a monetary penalty of one thousand dollars.

LENDING

LEGISLATION
Alabama
Small Loan Act

2017 AL H 314. Enacted 5/24/2017. Effective immediately.

This bill amends the Alabama Small Loan Act to increase the lending authority and further provide for the interest rates; and to provide further for the minimum and maximum term of loans.

The bill amends Ala. Code §§ 5-18-4, 5-18-10, 5-18-13, and 5-18-15 to require a license to engage in the business of lending in amounts of less than one thousand five hundred dollars ($1,500) (formerly, $1,000) and contract for, exact or receive, directly or indirectly, on or in connection with any such loan, any charges whether for interest, insurance, compensation, consideration, or expense, which in the aggregate are greater than the interest that the lender would be permitted by law to charge for a loan of money if he were not a licensee under this chapter.

The bill also amends Ala. Code § 5-18-15 to provide for alternate rates of charge. Provides that a licensee may charge an acquisition charge for making the loan in an amount not in excess of 10 percent of the amount of the principal and an installment account handling charge in an amount no greater than the following:

a. Twelve dollars ($12) per month on any loan of an amount of one hundred dollars ($100) or more, up to and including the amount of three hundred dollars ($300).

b. Fourteen dollars ($14) per month on any loan of an amount in excess of three hundred dollars ($300), but not more than four hundred dollars ($400).

c. Sixteen dollars ($16) per month on any loan of an amount in excess of four hundred dollars ($400), but not more than five hundred dollars ($500).

d. Twenty dollars ($20) per month on any loan of an amount in excess of five hundred dollars ($500), but not more than one thousand dollars ($1,000).

e. Twenty-three dollars ($23) per month on any loan of an amount in excess of one thousand dollars ($1000), but not more than one thousand two hundred fifty dollars ($1250).

f. Twenty-six dollars ($26) per month on any loan of an amount in excess of one thousand two hundred fifty dollars ($1,250), but not equal to or exceeding one thousand five hundred dollars ($1,500).

Provided, however, that the scheduled payments are in amounts equal to or greater than forty dollars ($40) per month, inclusive of the installment account handling charge. The acquisition charge and the installment account handling charge may be calculated for the term of the contract and added to the amount of the principal. The acceptance or payment of charges on loans made under this subsection shall not be deemed to constitute payment, deduction, or receipt thereof in advance nor compounding under this subsection.

The bill adds that the minimum term for repayment of a loan under this subsection is three months. The bill amends the maximum term of any loan made under this subsection to 18 months (formerly, 12 months).

The act applies to loan contracts entered into after the effective date of the act.

The act does not affect loan contracts entered into prior to the effective date of the act.

LEGISLATION
Georgia
Convenience fees

2017 GA H 143. Enacted 5/1/2017. Effective 6/1/2017.

This bill adds Ga. Code Ann. § 7-1-239.6 to provide that a financial institution or mortgage lender, as such term is defined by Code Section 7-1-1000, may charge a convenience fee provided that such fee is permissible in accordance with Code Section 13-1-15. For purposes of this Code section, the term 'convenience fee' means any additional amount imposed to a consumer at the time of a transaction for the election of making a payment by electronic means. A convenience fee may include, but is not limited to, any fee charged for payment to an account with the assistance of a live representative or agent of the financial institution or mortgage lender, by telephone, using a voice response unit, or other electronic means. A convenience fee does not include a discount offered by a lender or merchant to a person for payment by cash, check, or similar means.

LEGISLATION
Iowa
Unlicensed loans – Fees and charges

2017 IA S 502. Enacted 5/11/2017. Effective 7/1/2017.

This bill amends Iowa Code § 537.2301 by adding a new subsection (2A) to provide that supervised loan made by a person who is not authorized to make supervised loans shall be void and the consumer is not obligated to pay either the amount financed or the finance charge. If the consumer has paid any part of the amount financed or the finance charge, the consumer has a right to recover the payment from the person in violation of subsection 2 or from an assignee of that person's rights who undertakes direct collection of payments or enforcement of rights arising from the debt. With respect to violations arising from loans made pursuant to open-end credit, no action pursuant to this subsection may be brought more than two years after the violation occurred. With respect to violations arising from other loans, no action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement pursuant to which the charge was paid.

The bill amends Iowa Code § 537.2501 by providing that in addition to the permitted finance charge, a creditor may contract for and receive a surcharge as provided for in section 554.3512 for a dishonored check, draft, or order that was accepted as payment for a consumer credit transaction payment. The surcharge shall not be assessed against the maker if the reason for the dishonor of the instrument is that the maker has stopped payment pursuant to section 554.4403.

The bill also adds that a creditor may contract for and receive credit reporting charges.

Iowa Code § 537.2502, Delinquency charges, has been amended to provide that, with respect to a consumer credit transaction not pursuant to an open-end credit arrangement and other than a consumer lease or consumer rental purchase agreement, the parties may contract for a delinquency charge on any installment not paid in full within ten days after its due date, as originally scheduled or as deferred, in an amount as follows:

a. For a precomputed transaction, an amount not exceeding the greater of either of the following:

(1)Five percent of the unpaid amount of the installment, or a maximum of thirty (formerly, twenty) dollars.

(2)The deferral charge that would be permitted to defer the unpaid amount of the installment for the period that it is delinquent.

b. For an interest-bearing transaction, an amount not exceeding five percent of the unpaid amount of the installment, or a maximum of thirty (formerly, fifteen) dollars.

The bill amends Iowa Code § 537.5201 to provide that, if a creditor has contracted for or received a charge in excess of that allowed by the chapter, or if a consumer is entitled to a refund and a person liable to the consumer refuses to make a refund within a reasonable time after demand, the consumer may recover from the creditor or the person liable, in an action other than a class action, the excess charge or refund and a penalty in an amount determined by the court not less than two hundred dollars (formerly, $100) or more than two thousand dollars (formerly, $1,000).

The bill amends Iowa Code § 537.5203, Civil liability for violation of disclosure provisions, to provide that, except as otherwise provided in this section, a creditor who, in violation of the provisions of the Truth in Lending Act other than its provisions concerning advertising of credit terms, fails to disclose information to a person entitled to the information under this chapter is liable to that person, in other than a class action, in an amount equal to the sum of the following:

a. Twice the amount of the finance charge in connection with the transaction, but the liability pursuant to this paragraph shall be not less than two hundred dollars (formerly, $100) or more than two thousand dollars (formerly, $1,000).

b. In the case of a successful action to enforce the liability under paragraph a, the costs of the action together with reasonable attorney's fees as determined by the court.

Amendments have been made to Iowa Code § 537.6113 to provide that the administrator may bring a civil action against a person to recover a civil penalty of no more than ten thousand dollars (formerly, $5,000) for repeatedly and intentionally violating Chapter 537, the Consumer Credit Code.

The bill amends Iowa Code § 537.6203 to provide that a person required to file notification shall pay to the administrator an annual fee of fifty dollars (formerly, $10).

Also, in addition to the penalties provided by section 537.6113, subsection 3, the administrator may collect a charge, established by rule, not exceeding seventy-five dollars (formerly, $25) from each person required to pay fees under this section who fails to pay the fees in full within thirty days after they are due.

LEGISLATION
Iowa
Deferral

2017 IA S 503. Enacted 5/11/2017. Effective 7/1/2017.

This bill amends Iowa Code § 537.2503 by adding a new subsection to provide that, with respect to an interest-bearing consumer credit transaction not pursuant to an open-end credit arrangement and other than a consumer lease or consumer rental purchase agreement, the parties to the transaction may agree in writing to a deferral of all or part of one or more unpaid installments in addition to any interest accrued pursuant to the terms of the consumer credit transaction. The creditor may make at the time of deferral and receive at that time or at any time thereafter a deferral charge which shall not exceed thirty dollars per deferred installment.

LEGISLATION
Maryland
Disclosures

2017 MD S 392. Enacted 5/4/2017. Effective 7/1/2017.

This bill is for the purpose of providing that a certain disclosure provided by a lender to a borrower in compliance with a certain federal law shall satisfy certain disclosure requirements under certain provisions of law governing certain closed end credit loans secured by a

first mortgage or first deed of trust on residential real property.

The bill requires the Commissioner of Financial Regulation to monitor certain federal requirements and notify the Governor and the General Assembly if the Commissioner makes a certain determination.

The bill amends Md. Code Ann., Com. Law § 12-125 (under Subtitle 1, Interest and Usury) to provide that a disclosure provided by a lender who offers to make or procure a loan secured by a first mortgage or first deed of trust on a 1- to 4-family home to be occupied by the borrower in compliance with 12 C.F.R. § 1026.37 shall satisfy the requirements of this subsection.

A notice sent to a borrower where any of the provisions of the financing agreement are subject to change or determination after its execution in compliance with 12 C.F.R. § 1026.37 also satisfy the requirements of the appropriate subsection.

The bill makes the same amendments to Md. Code Ann., Com. Law § 12-1022 (under Subtitle 10—Credit Grantor Closed End Credit Provisions).

LEGISLATION

New Mexico

Bank Installment Loan Act - Small Loan Act

2017 NM H 347. Enacted 4/6/2017. Effective 1/1/2018.

This bill amends N.M. Stat. Ann. §§ 56-8-9 and 58-7-3 to provide that a loan in an amount equal to five thousand dollars ($5,000) or less shall be made only pursuant to the New Mexico Bank Installment Loan Act of 1959 or the New Mexico Small Loan Act of 1955.

The bill amends N.M. Stat. Ann. § 58-7-6 to provide that if there are insufficient funds to pay a check or other type of debit on the date of presentment by the lender, a check or debit authorization request shall not be presented to a financial institution by a lender for payment more than one time unless the consumer agrees in writing, after a check or other type of debit has been dishonored, to one additional presentment or deposit.

The bill amends N.M. Stat. Ann. § 58-7-7 to provide that no lender other than a federally insured depository institution shall make a loan pursuant to the New Mexico Bank Installment Loan Act of 1959 if a loan has an initial stated maturity of less than one hundred twenty days.

No lender other than a federally insured depository institution shall make a loan pursuant to the New Mexico Bank Installment Loan Act of 1959 unless the loan is repayable in a minimum of four substantially equal installment payments of principal and interest.

No lender, other than a federally insured depository institution, shall make a loan pursuant to the New Mexico Bank Installment Loan Act of 1959 that has an annual percentage rate greater than one hundred seventy-five percent, calculated pursuant to 12 CFR Part 1026, known as "Regulation Z"."

N.M. Stat. Ann. § 58-7-8 has been amended to provide that a violation of the New Mexico Bank Installment Loan Act of 1959 constitutes an unfair or deceptive trade practice pursuant to the Unfair Practices Act.

The bill amends N.M. Stat. Ann. § 58-15-5 to provide that, in addition to other fees provided, at the time of issuance of original license and each annual renewal thereof, the licensee for each licensed office shall pay to the director as an additional fee for the period covered by the license the sum of two hundred dollars ($200), which fee shall be deposited into the financial literacy fund.

The bill also amends N.M. Stat. Ann. § 58-15-10.1, concerning licensee reporting requirements.

The bill amends N.M. Stat. Ann. § 58-15-17 to provide that every licensee shall, at the time a loan is made

within the provisions of the New Mexico Small Loan Act of 1955, deliver to the borrower or, if there are two or more borrowers on the same obligation, to one of them, a statement in English or Spanish, as required by federal law (formerly, requested by the borrower), on which shall be printed a copy of Section 58-15-14.1 NMSA 1978 and that discloses in clear and distinct terms certain specified information.

The bill provides that no lender shall make a loan pursuant to the New Mexico Small Loan Act of 1955 if a loan has an initial stated maturity of less than one hundred twenty days.

No lender shall make a loan pursuant to the New Mexico Small Loan Act of 1955 unless the loan is an installment loan.

No lender shall make a loan pursuant to the New Mexico Small Loan Act of 1955 unless the loan is repayable in a minimum of four substantially equal installment payments of principal and interest.

No lender shall make a loan pursuant to the New Mexico Small Loan Act of 1955 that has an annual percentage rate greater than one hundred seventy-five percent, calculated pursuant to 12 CFR Part 1026, known as "Regulation Z"."

The bill also adds new sections to provide that if there are insufficient funds to pay a check or other type of debit on the date of presentment by the licensee, a check or debit authorization request shall not be presented to a financial institution by a licensee for payment more than one time unless the consumer agrees in writing, after a check or other type of debit has been dishonored, to one additional presentment or deposit.

A licensee shall not charge a consumer for fees, interest or charges of any kind other than those permitted pursuant to Sections 58-15-16 and 58-15-20 NMSA 1978."

For each installment loan made pursuant to the New Mexico Small Loan Act of 1955, a lender shall report to a consumer reporting agency the terms of the loan and the borrower's performance pursuant to those terms.

LEGISLATION

New York

Manufactured home replacement program

2017 NY S 2006. Enacted 4/20/2017. Effective immediately.

This bill provides that, notwithstanding any other provision of law, the housing trust fund corporation shall provide, for the purposes of the mobile and manufactured home replacement program, a sum not to exceed one million dollars for the fiscal year ending March 31, 2018.

Eligible units of local government or not-for-profit corporations with substantial experience in affordable housing, may apply to administer local programs to replace dilapidated mobile or manufactured homes that are sited on land owned by the homeowner with new manufactured, modular or site built homes. All replacement homes shall be energy star rated for energy efficiency. The total contract pursuant to any one eligible applicant in a specified region may not exceed five hundred thousand dollars. The corporation shall authorize the eligible applicant to spend seven and one-half percent of the contract amount for approved planning and costs associated with administering the program. The contract shall provide for completion of the program within a reasonable period, as specified therein, which shall not exceed four years from commencement of the program. Upon request, the corporation may extend the term of the contract for up to an additional one year period for good cause shown by the eligible applicant.

An eligible property must be the primary residence of the homeowner with a total household income that does not exceed eighty percent of area median income for the county in which a project is located as calculated by the United States department of housing and urban development. Funds shall be made available for relocation assistance to eligible property owners who are unable to voluntarily relocate during the demolition and construction phases of the project. The cost of demolition and removal shall be an eligible use within the program. The total payment to replace a mobile or manufactured home pursuant to any one eligible property shall not exceed one hundred thousand dollars and provide for completion not to exceed four years.

Financial assistance to property owners shall be one hundred percent grants in the form of deferred payment loans (DPL). A ten year declining balance lien in the form of a note and mortgage, duly filed at the county clerk's office, will be utilized for replacement projects. No interest or payments will be required on the DPL unless the property is sold or transferred before the regulatory term expires. In such cases funds will be recaptured from the proceeds of the sale of the home, on a declining balance basis, unless an income-eligible immediate family member accepts ownership of, and resides in the home for the remainder of the regulatory term.

Notwithstanding any other provision of law, and subject to approval of the New York state director of the budget, the board of directors of the state of New York mortgage agency shall authorize the transfer to the housing trust fund corporation, for the purposes of carrying out the provisions of the mobile and manufactured home replacement program, a total sum not to exceed one million dollars, such transfer to be made from (i) the special account of the mortgage insurance fund created pursuant to section 2429-b of the public authorities law, in an amount not to exceed the actual excess balance in the special account of the mortgage insurance fund, as determined and certified by the state of New York mortgage agency for the fiscal year 2016-2017 in accordance with section 2429-b of the public authorities law, if any, and/or (ii) provided that the reserves in the project pool insurance account of the mortgage insurance fund created pursuant to section 2429-b of the public authorities law are sufficient to attain and maintain the credit rating (as determined by the state of New York mortgage agency) required to accomplish the purposes of such account, the project pool insurance account of the mortgage insurance fund, such transfer to be made as soon as practicable but no later than March 31, 2018.

LICENSING

LEGISLATION

Arizona

Manufacturers – Dealer – Salespersons - Installers

2017 AZ S 1218. Enacted 5/22/2017. Effective 8/9/2017.

Parts of this bill are included under Communities, Installation, Licensing, and Sales.

The bill amends Ariz. Rev. Stat. Ann. § 41-4025, Qualifications and requirements for license, to provide that, before the issuance of an installer license, the qualifying party shall also provide the department with evidence of successful completion of the online installer course that is administered by the manufactured housing educational institute and proof of three years of practical or field experience or training that is deemed acceptable by the department.

The bill amends Ariz. Rev. Stat. Ann. § 41-4026, Issuance of a license (for a manufacturer, dealer, broker, salesperson or installer), to provide that, on receipt by the director of the nonrefundable fee required by this article and an application furnishing complete information as required by the director and on the applicant taking and passing the applicable examination required by section 41-4025, the director shall issue a

conditional license (adding, "conditional") to the applicant, pending completion of the background analysis, permitting the applicant to engage in business pursuant to this article for one year.

Depending on the results of the background analysis, the director may either revoke the conditional license or deem the license as granted without further condition (formerly, this read: On completion of the background analysis, the director may issue either a permanent or a probationary license, depending on the results of the background analysis).

The bill deletes the provision requiring that a license card be carried by the person doing the work away from the premises where the license is posted.

The bill amends Ariz. Rev. Stat. Ann. § 41-4039, Grounds for disciplinary action, to provide that such grounds exist where a salesperson acts beyond the scope of activity authorized by the salesperson's license classification of the employing dealer.

Ariz. Rev. Stat. Ann. § 41-4048, Violation; classification; penalty, as amended, now provides that;

A. A person required to be licensed pursuant to this article may not sell or offer to sell in this state any manufactured home, or factory-built building (deleting, "or subassembly") unless the proper state certificate (formerly, "insignia") or HUD label is affixed to such unit.

B. A person required to be licensed pursuant to this article may not manufacture for delivery, sell or offer to sell in this state any manufactured home, or factory-built building (deleting, "or subassembly") unless the unit and its components, systems and appliances have been constructed and assembled in accordance with the standards and rules adopted pursuant to this chapter.

C. A person shall not occupy or otherwise use a mobile home that has been brought into this state or move a mobile home from one mobile home park in this state to another mobile home park in this state unless it meets the standards adopted pursuant to this chapter and displays the proper state certificate (formerly, "insignia"). A mobile home that is rehabilitated in accordance with rehabilitation rules adopted by the department and receives a certificate (formerly, "an insignia of approval") shall be deemed by a county or municipality to be acceptable for relocation into an existing mobile home park. This subsection does not apply to a person bringing a mobile home into this state as a tourist.

D. A person shall not advertise or offer for sale a mobile home that has been brought into this state unless it meets the standards adopted pursuant to this chapter and displays the proper state certificate (formerly, "insignia").

E. A person may not remove or cause to be removed a certificate (formerly, "an insignia of approval") or a notice of violation without prior authorization of the department.

L. In addition to any other obligations imposed by law or contract during the term of a listing agreement, a licensee who has agreed to act as an agent to offer a mobile home, manufactured home or factory-built building (adding, "mobile home," "or factory-built building") for sale shall promptly submit all offers to purchase the listed unit from any source to the client. The offers shall be in writing and signed and dated by the party making the offer and the client on receipt. A copy of the executed document shall be maintained as part of the record of sales.

LEGISLATION

Maine

Mortgage loan servicers

2017 ME S 444. Enacted 5/30/2017. Effective 9/19/2017 (projected).

This bill adds Me. Stat. tit. 9-A, § 1-301, sub-§17 to provide that "Creditor" includes a mortgage loan servicer.

The bill adds Me. Stat. tit. 9-A, § 1-301, sub-§24-C to provide that "Mortgage loan servicer" means a person or organization that undertakes direct collection of payments from or enforcement of rights against debtors arising from a supervised loan secured by a dwelling.

The bill also amends Me. Stat. tit. 9-A, § 1-301, sub-§39, to provide that "Supervised lender" includes a person authorized to service supervised loans.

Me. Stat. tit. 9-A, § 2-301 has been amended to provide that a license is required to service mortgage loans.

The bill also adds references to the servicing of mortgage loans in Me. Stat. tit. 9-A, §§ 2-302, 2-303, 2-303-A, 2-304, 2-309, 9-101 and 9-201.

LEGISLATIONS

Nebraska

Salespersons

2017 NE L 346. Enacted 5/9/2017. Effective 9/3/2017.

This bill amends Neb. Rev. Stat. §§ 60-373, 60-1406, 60-1407, 60-1410, 60-1411, 60-1411.01, 60-1411.02, 60-1413, and 60-1416 to eliminate the requirement for a motor vehicle, motorcycle, or trailer salesperson license and make conforming amendments.

The definition of motor vehicle dealer in Neb. Rev. Stat. § 60-1401.26 includes any person, other than a bona fide consumer, actively and regularly engaged in the act of selling, leasing for a period of thirty or more days, or exchanging new or used manufactured homes.

SALES

LEGISLATION

Arizona

Escrow

2017 AZ S 1218. Enacted 5/22/2017. Effective 8/9/2017.

Parts of this bill are included under Communities, Installation, Licensing, and Sales.

The bill amends Ariz. Rev. Stat. Ann. § 41-4030, Trust and escrow requirements; rules; exemptions, to provide that each dealer who sells new manufactured homes (adding, “new”) or factory-built buildings designed for use as residential dwellings or a manufactured home, mobile home or factory-built building designed for use as a residential dwelling that is previously owned and that has a purchase price of less than fifty thousand dollars shall maintain a licensee's trust account or open an escrow account with an independent financial institution or escrow agent (adding, “independent”) located in the state and shall deposit all earnest money received for the sale of manufactured homes, mobile homes or factory-built buildings designed for use as residential dwellings in such account. The department shall conduct an audit of each dealer's trust or escrow account, including any transactions with an independent escrow account, at least once every two years. A purchaser of a mobile home, used manufactured home or used factory-built building designed for use as a residential dwelling may request that the dealer establish an independent escrow account and if such a request is made in writing no later than the time the purchase contract is signed, and the seller consents, the dealer shall comply with this subsection by complying with subsection a of this section. A licensee handling a transaction under this subsection shall disclose to the purchaser, in writing and before or at the time the purchaser signs the purchase contract, that the purchaser may request in writing the use of an independent escrow account, and that the

transaction will otherwise be handled through a trust account controlled by the licensee.

The bill provides that all earnest money deposited in the trust or escrow account shall be held in such account until one of the following is completed:

1. The consummation of sale.

2. The termination of sale, including a complete accounting of all monies.

(Formerly:

1. An application for title transfer has been made.

2. The transaction involved is consummated or terminated and a complete accounting is made.)

LEGISLATION
New Hampshire
Accessory dwelling units

2017 NH H 265. Enacted 6/5/2017. Effective immediately.

This bill amends N.H. Rev. Stat. Ann. § 674:72 to authorize a municipality to prohibit accessory dwelling units associated with multiple single-family dwellings attached to each other such as townhouses, and with manufactured housing as defined in RSA 674:31. Subsequent condominium conveyance of any accessory dwelling unit separate from that of the principal dwelling unit shall be prohibited, notwithstanding the provisions of RSA 356-B:5, unless allowed by the municipality.

LEGISLATION
New Jersey
GAP waivers

2016 NJ A 3601. Enacted 5/11/2017. Effective immediately, to apply to all GAP waivers executed on or after the 180th day next following enactment.

The bill provides a framework within which guaranteed asset protection waivers are defined and may be offered within New Jersey, adding new sections to Title 17 of the Revised Statutes.

The amendments include provisions providing that guaranteed asset protection waivers governed under the act are not insurance and are exempt from the insurance laws of New Jersey. Persons marketing, selling or offering to sell guaranteed asset protection waivers to borrowers that comply with the act aree exempt from this State's licensing requirements provided in the "New Jersey Insurance Producer Licensing Act of 2001."

LEGISLATION
Texas
Ownership records - Lien records - Installation records - License holder records

2017 TX H 2019. Enacted 6/1/2017. Effective 9/1/2017.

This bill amends Tex. Occ. Code Ann. § 1201.003, under the Texas Manufactured Housing Standards Act, to provide that "advertisement" means a commercial message that promotes the sale or exchange (deleting, "or lease-purchase") of a manufactured home and that is presented on radio, television, a public-address system, or electronic media or appears in a newspaper, a magazine, a flyer, a catalog, direct mail literature, an inside or outside sign or window display, point-of-sale literature, a price tag, or other printed material. The term does not include educational material or material required by law.

The bill amends the term "business use" to mean the use of a manufactured home in conjunction with operating a business (adding, "in conjunction with operating a business"), for a purpose other than as a permanent or temporary residential dwelling (adding, "residential").

The bill adds the definition for "credit transaction" to provide it has the meaning assigned by Section

347.002(a)(3), Finance Code, and the definition for "nonresidential use," providing that it means use of a manufactured home for a purpose other than as a permanent or temporary residential dwelling.

The bill also adds that "sales purchase contract" means the contract between a retailer and a consumer for the purchase of a manufactured home from the retailer.

The term “lease purchase” has been removed from the definitions of “broker,” “consumer,” “manufacturer,” “retailer” and “salesperson.” The bill also makes conforming amendments to other sections to remove the term.

The definition of “related person” has been amended to provide that it means a person who:

(A) directly or indirectly participates (deleting, “or indirectly”) in management or policy decisions; and

(B) is designated by an entity and satisfies the requirements of Sections 1201.104 and 1201.113 on behalf of the entity, if the entity is licensed or seeking licensure under this chapter (adding, subsection B).

The bill amends the definition of "statement of ownership and location" to refer only to “statement of ownership” and deleting from the definition that it sets forth the location of a manufactured home in the state. The bill also makes conforming amendments to other sections.

The bill adds Tex. Occ. Code Ann. § 1201.010 to read as follows:

ELECTRONIC PUBLIC RECORDS REQUIRED. The department shall provide to the public through the department's Internet website searchable and downloadable information regarding manufactured home ownership records, lien records, installation records, license holder records, and enforcement actions. (The “department” refers to the Texas Department of Housing and Community Affairs operating through its manufactured housing division.)

The bill adds subsection (d) to Tex. Occ. Code Ann. § 1201.054 to provide that, to maintain affordability of manufactured homes in the state, the board shall:

(1) conduct a cost benefit analysis for any rule, process, or policy change that will increase a fee or another incurred cost by more than $50 for license holders or consumers; and

(2) present at the next board meeting an analysis detailing whether the need for the rule, process, or policy change justifies the increase.

The bill adds subsection (c-1) to Tex. Occ. Code Ann. § 1201.102 to provide that an individual who is listed as an owner, principal, partner, corporate officer, registered agent, or related person of an entity that is licensed as a retailer or broker may act on behalf of that license holder in the capacity of a retailer, broker, or salesperson without holding the appropriate license if at least one individual who is listed as an owner, principal, partner, corporate officer, registered agent, or related person of the entity has satisfied the requirements of sections 1201.104 and 1201.113.

Tex. Occ. Code Ann. § 1201.105 has been amended to provide that the retailer license bond or other security should be payable to the manufactured homeowner consumer claims program (formerly, to the “Manufactured Homeowners' Recovery Trust Fund”).

The bill amends Tex. Occ. Code Ann. § 1201.106(a-1) to provide that, notwithstanding the provisions of Subsection (a), the director may require additional security for the licensing, renewal, or relicensing of a person, or the sponsoring of a salesperson (adding, “or the sponsoring of a salesperson”), who, either directly, as a related person, or through a related person, has been the subject of a license revocation, has caused the manufactured homeowner consumer claims program (formerly, “the trust fund”) to incur unreimbursed costs or liabilities in excess of available surety bond coverage,

or has failed to pay an administrative penalty that has been assessed by final order.

The bill amends Tex. Occ. Code Ann. § 1201.151 to provide that a deposit becomes a down payment upon execution of a sales purchase contract (formerly, "binding written agreement"). Thereafter, if the consumer exercises the consumer's three-day right of rescission (adding, "the consumer's three-day") in accordance with Section 1201.1521 (adding the statutory reference), the retailer shall, not later than the 15th day after the date of the rescission, refund to the consumer all money and other consideration received from the consumer, with only the allowable deduction for real property appraisal and title work expenses in accordance with Section 1201.1511 (formerly, "without offset or deduction.").

The bill also adds subsection (f) to provide that retention of real property appraisal and title work expenses authorized by Subsection (e) is not allowed if the consumer exercises the right of rescission in accordance with 12 C.F.R. § 1026.23.

Tex. Occ. Code Ann. § 1201.1511, REAL PROPERTY APPRAISAL AND TITLE WORK EXPENSES, has been added to provide that, notwithstanding Section 1201.151 or 1201.1521, a retailer may collect from a consumer in advance or deduct from the consumer's deposit or down payment any expenses incurred by the retailer if, after receiving a conditional notification of approval from a lender chosen by the consumer, the consumer:

(1) contracts with the retailer to arrange for services that are performed by an appraiser of real property or a title company in connection with real property that will be included in the purchase or exchange or is intended to be pledged by the consumer as collateral for the consumer's purchase or exchange of a manufactured home;

(2) is provided notice of laws relating to rescission and real property appraisal and title work expenses before signing the contract for real property appraisal and title work services; and

(3) is provided an itemized list of the specific real property appraisal and title work expenses incurred by the retailer.

(b) A retailer may not charge to the consumer any fees or expenses other than the real property appraisal and title work expenses disclosed to the consumer under Subsection (a)(3).

(c) The department may demand copies of contracts, invoices, receipts, or other proof of any real property appraisal and title work expenses retained by a retailer.

The bill amends Tex. Occ. Code Ann. § 1201.1521, RESCISSION OF CONTRACT FOR SALE OR EXCHANGE OF HOME, to provide that a person who acquires a manufactured home from or through a licensee by purchase or exchange, may, in a cash transaction occurring (adding, "in a cash transaction occurring") not later than the third day after the date the sales purchase contract (formerly, the "applicable contract") is signed, rescind the contract without penalty or charge other than the real property appraisal and title work expenses incurred in accordance with Section 1201.1511 (adding the reference to appraisal and title work expenses).

The bill also adds that a person who acquires a manufactured home from or through a licensee by purchase or exchange may, in a transfer that is based wholly or partly on a credit transaction occurring not later than the third day after the date of the signing of the binding note, security agreement, or other financing credit contract with respect to which the consumer's purchased manufactured home will serve as collateral for the credit transaction, rescind the contract without penalty or charge other than the real property appraisal and title work expenses incurred in accordance with Section 1201.1511.

The bill also provides that, subject to rules adopted by the board, a consumer may waive a right of rescission in

the event of a bona fide emergency. Such rules shall, to the extent practical, be modeled on the federal rules for the waiver of a right of rescission under 12 C.F.R. Part 1026 (formerly, 226).

The bill amends Tex. Occ. Code Ann. § 1201.157, RETAILER AS WAREHOUSE (formerly, WAREHOUSEMAN), to provide that, with respect to the storage of manufactured homes for hire (adding, "with respect to the storage of manufactured homes for hire"), a licensed retailer is:

(1) a "warehouse" (formerly, "warehouseman") as defined by Section 7.102, Business & Commerce Code; and

(2) a "warehouseman" under Chapter 24, Property Code (deleting, "for the storage of manufactured homes for hire").

The provisions of the Business & Commerce Code relating to the storage of goods for hire apply to a licensed retailer acting as a warehouse (formerly, warehouseman).

The bill adds that a licensed retailer acting as a warehouse and warehouseman satisfies all storage, bonding, insurance, public sale, and security requirements if the storage of a manufactured home occurs on the retailer's lot and the home is secured in the same manner the retailer secures a manufactured home held on the lot as inventory.

The bill further adds that, in accordance with the provisions of Section 7.210, Business & Commerce Code, a licensed retailer acting as a warehouse to enforce a warehouse's lien is considered to have sold a manufactured home in a commercially reasonable manner if the retailer sells the manufactured home in the same manner the retailer would sell a manufactured home at retail.

The bill amends Tex. Occ. Code Ann. § 1201.164, ADVANCE COPY OF SALES PURCHASE CONTRACT AND DISCLOSURE STATEMENTS; OFFER BY RETAILER (adding, "SALES PURCHASE"), to provide that, in a transaction that is to be financed and that will not be subject to the federal Real Estate Settlement Procedures Act of 1974 (Pub. L. No. 93-533) and its implementing regulations, a retailer shall deliver to a consumer at least 24 hours before the sales purchase contract (adding, "sales purchase") is fully executed the contract, with all required information included, signed by the retailer. The delivery of the contract, with all required information included, signed by the retailer constitutes a firm offer by the retailer. Except as provided for by Subsection (b), the consumer may accept the offer not earlier than 24 hours after the delivery of the contract. If the consumer has not accepted the offer within 72 hours after the delivery of the contract, the retailer may withdraw the offer.

The bill provides that if the consumer has a bona fide personal emergency that necessitates the immediate purchase of the manufactured home, the department shall verify with the consumer the consumer's bona fide personal emergency before issuing the statement of ownership.

The amendment deletes the provision that printed forms for this purpose are prohibited except in a county that has been declared by the governor to be a major disaster area. If the governor declares a county to be a major disaster area, the retailer may use printed forms promulgated by the department. This exception shall expire one year after the county has been declared a major disaster area.

The heading to Subchapter E, Chapter 1201, Occupations Code, has been amended to read as follows:

SUBCHAPTER E. MANUFACTURED HOME STATEMENTS OF OWNERSHIP (formerly, . MANUFACTURED HOME STATEMENTS OF OWNERSHIP AND LOCATION).

The bill amends Tex. Occ. Code Ann. § 1201.201 by adding the definition of "certificate of attachment" to mean a written instrument issued solely by and under

the authority of the director before September 1, 2001, that provides the information required by former Section 19(l), Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), as that subsection existed before that date. Beginning September 1, 2003, a certificate of attachment is considered to be a statement of ownership and may be exchanged for a statement of ownership as provided by Section 1201.214.

The bill provides that "inventory" means new and used manufactured homes that:

(A) a retailer has designated as the retailer's inventory for sale pursuant to the process implemented by the department; and

(B) are not used as residential dwellings when so designated.

The bill amends Tex. Occ. Code Ann. § 1201.205 to provide that a statement of ownership must include a statement of whether the owner has elected to treat the home as real property (deleting, "or personal property").

The statement of ownership must also include statements of whether the home is a salvaged manufactured home and whether the home is reserved for business use only or for another nonresidential use (adding, "or for another nonresidential use").

The bill amends Tex. Occ. Code Ann. § 1201.2055, with reference to the statement of ownership to be issued by the department if an owner elects to treat a manufactured home as real property, to delete the requirement that the statement be certified.

Tex. Occ. Code Ann. § 1201.206 has been amended to provide that, when an application is filed for the issuance of a statement of ownership for a used manufactured home that is not in a retailer's inventory or is being converted from personal property to real property in accordance with Section 1201.2075 (adding, "or is being converted from personal property to real property in accordance with Section 1201.2075"), a statement from the tax assessor-collector for the taxing unit having power to tax the manufactured home shall also be filed with the department. The statement from the tax assessor-collector must indicate that, with respect to each January 1 occurring in the 18-month period preceding the date of the sale (adding, "with respect to each January 1 occurring in the 18-month period preceding the date of the sale"), there are no perfected and enforceable tax liens on the manufactured home that have not been extinguished and canceled in accordance with Section 32.015, Tax Code, or (adding, "perfected and enforceable tax liens on the manufactured home that have not been extinguished and canceled in accordance with Section 32.015, Tax Code, or") personal property taxes due on the manufactured home.

The bill amends Tex. Occ. Code Ann. § 1201.2075, CONVERSION FROM PERSONAL PROPERTY TO REAL PROPERTY, to provide that the department may issue a statement of ownership before the release of any liens or before receiving the consent of any lienholders as required by this section, or without receiving the statement required by Section 1201.206(g) (adding, "or without receiving the statement required by Section 1201.206(g)"), if the department releases a copy (formerly, a certified copy) of the statement.

The bill adds Tex. Occ. Code Ann. § 1201.2076(a-1) to provide that the department may not require an inspection for habitability before issuing a statement of ownership with respect to a manufactured home if the home is being sold to or ownership is otherwise being transferred to a retailer.

The bill amends Tex. Occ. Code Ann. § 1201.214, DOCUMENT OF TITLE; CERTIFICATE OF ATTACHMENT (adding "CERTIFICATE OF ATTACHMENT"), to provide that all outstanding documents of title or certificates of attachment are considered to be statements of ownership (adding, "or certificates of attachment").

An owner or lienholder may provide to the department a document of title or certificate of attachment and any additional information required by the department and request that the department issue a statement of ownership to replace the document of title or certificate of attachment. The department shall mail to the owner or lienholder a copy of the statement of ownership issued under this subsection (adding both references to "certificate of attachment").

The bill amends Tex. Occ. Code Ann. § 1201.217, MANUFACTURED HOME ABANDONED, to add subsection (d-1) to provide that, when applying for a statement of ownership under this section, the real property owner shall include with the application an affidavit stating that:

(1) the person owns the real property where the manufactured home is located; and

(2) the name of the person to whom title to the home will be transferred under this section is the same name that is listed in the real property or tax records indicating the current ownership of the real property.

The bill also adds subsection (g) to provide that an owner of real property on which a manufactured home has been abandoned may apply for a new statement of ownership with respect to a home that was previously declared abandoned and then resold and abandoned again.

The bill amends Tex. Occ. Code Ann. § 1201.255 to provide that an uninstalled manufactured home may not be occupied for any purpose other than to view the home on a retailer's sales lot (adding, "other than to view the home on a retailer's sales lot").

The bill amends Subchapter I, Chapter 1201, Occupations Code, to be read as: MANUFACTURED HOMEOWNER CONSUMER CLAIMS PROGRAM (formerly, MANUFACTURED HOMEOWNERS' RECOVERY TRUST FUND).

The bill amends Tex. Occ. Code Ann. § 1201.457, HABITABILITY: CHANGE TO OR FROM NONRESIDENTIAL USE OR SALVAGE, to provide that, if the sale or exchange of a used manufactured home is for the purchaser's nonresidential use other than a business use, the home is not required to be habitable. The purchaser of the home shall file with the department an application for the issuance of a statement of ownership indicating that the home is for a nonresidential use other than a business use.

The bill amends Tex. Occ. Code Ann. § 1201.460, COMPLIANCE NOT REQUIRED FOR LIENHOLDER, to provide that a holder of a lien recorded on the statement of ownership of a manufactured home that has not been converted to real property who sells or exchanges, a repossessed manufactured home covered by that statement of ownership is not required to comply with this chapter if the sale or exchange is:

(1) to or through a licensed retailer; or

(2) to a purchaser for the purchaser's business use or another nonresidential use (adding, "or another nonresidential use").

Tex. Occ. Code Ann. § 1201.461(e), providing a person may not repair, rebuild, or otherwise refurbish (formerly, "alter") a salvaged manufactured home unless the person complies with the rules of the director relating to rebuilding a salvaged manufactured home, has been amended to add that, for purposes of this subsection, "refurbish" means any general repairs, improvements, or aesthetic changes to a manufactured home that do not constitute the rebuilding of a salvaged manufactured home.

The bill also amends Tex. Tax Code Ann. § 23.127, .Retail Manufactured Housing Inventory; Value, by adding subsection (m) to provide that, except as provided by Subsection (d), a chief appraiser shall appraise retail manufactured housing inventory in the manner provided by this section.

(Subsection (d) provides that, except for a retail manufactured housing inventory, personal property held by a retailer is appraised as provided by the other sections of this code. In the case of a retailer whose sales from the retail manufactured housing inventory are made predominately to other retailers, the chief appraiser shall appraise the retail manufactured housing inventory as provided by Section 23.12.)

NOTICE OF INTENDED REGULATORY ACTION
Virginia
Warranties - Disclosures

Notice is hereby given that the Manufactured Housing Board intends to consider amending 13 Va. Admin. Code § 6-20, Manufactured Housing Licensing and Transaction Recovery Fund Regulations. The purpose of the proposed action is to review issues related to licensing requirements for the manufactured housing industry members that will provide better protection to consumers without imposing unnecessary regulatory burdens on the licensees.

TAXES

LEGISLATION
Colorado
Personal property taxes

2017 CO H 1354. Enacted 5/22/2017. Effective 8/9/2017.

This bill amends Colo. Rev. Stat. § 39-10-111, Distraint, sale of personal property, to provide that the section does not apply to the collection of delinquent taxes on mobile homes or manufactured homes. The treasurer shall enforce the collection of delinquent taxes on mobile homes or manufactured homes pursuant to section 39-10-111.5.

The bill adds Colo. Rev. Stat. § 39-10-111.5, Distraint - sale - redemption - mobile homes.

This new section applies to the collection of delinquent taxes on mobile homes for which a certificate of title has been issued pursuant to part 1 of article 29 of title 38 and that does not have a certificate of permanent location pursuant to section 38-29-202.

For purposes of this section, "mobile home" includes a manufactured home.

The bill provides that, at any time after the first day of October, the treasurer may enforce collection of delinquent taxes on mobile homes by commencing a court action for collection or employing a collection agency as provided in section 39-10-112 or by distraining, seizing, and selling the mobile home.

Whenever a mobile home is distrained and seized, the treasurer, the treasurer's deputy, or an authorized agent of the treasurer shall deliver to the owner of the mobile home or to his or her agent, and to any lienholder of record, a statement of the amount demanded and notice of the time and place fixed for the sale of the mobile home.

The treasurer, in his or her discretion, may sell tax liens on mobile homes or may strike off to the county the tax liens by declaring them county-held.

Redemptions of mobile homes shall be in accordance with article 12 of title 39.

A mobile home that is located on leased land or other land not owned by the owner of the mobile home and that is sold under the provisions of this section may be redeemed by the owner thereof within one year after the date of the sale.

A mobile home that is located on land owned by the owner of a mobile home and that is sold under the provisions of this section may be redeemed by the owner thereof within three years after the date of the sale.

If the owner has not exercised his or her right of redemption and after the close of the redemption period, the purchaser or lawful holder of the certificate of sale may apply to the treasurer for a treasurer's certificate of ownership for the mobile home. Such certificate of ownership shall transfer to him or her all right, title, and interest in and to the mobile home. Such certificate of ownership shall, upon application, entitle the purchaser or holder thereof to a certificate of title.

Where a mobile home has been declared to be purchased by the county at the tax sale and where the actual value of the mobile home as shown on the assessment roll has been determined by the assessor to be less than one thousand dollars, the redemption period for such mobile home shall be sixty days. The treasurer shall notify the owner of the mobile home and any lienholder of record in the department of revenue and secretary of state, by personal delivery or by certified or registered mail to the last-known address, that the mobile home shall be declared condemned and shall be disposed of at the end of the redemption period. The treasurer has the authority to so declare a mobile home condemned after the redemption period has terminated. After the titled mobile home is declared condemned, it may be disposed of as the treasurer deems appropriate.

LEGISLATION

Indiana

Assessed values

2017 IN H 1450. Enacted 4/28/2017. Effective 7/1/2017.

This bill amends Ind. Code § 6-1.1-12-1, Assessed Value Deductions and Deduction Procedures, by adding the following definitions to apply throughout this section:

(1) "Installment loan" means a loan under which:

(A) a lender advances money for the purchase of:

(i) a mobile home that is not assessed as real property; or

(ii) a manufactured home that is not assessed as real property; and

(B) a borrower repays the lender in installments in accordance with the terms of an installment agreement.

(2) "Mortgage" means a lien against property that:

(A) an owner of the property grants to secure an obligation, such as a debt, according to terms set forth in a written instrument, such as a deed or a contract; and

(B) is extinguished upon payment or performance according to the terms of the written instrument.

The term includes a reverse mortgage.

The existing provisions of the section include that each year a person who is a resident of the state may receive a deduction from the assessed value of:

(1) mortgaged real property, an installment loan financed mobile home that is not assessed as real property, or an installment loan financed manufactured home that is not assessed as real property, with the mortgage or installment loan instrument recorded with the county recorder's office, that the person owns;

(2) real property, a mobile home that is not assessed as real property, or a manufactured home that is not assessed as real property that the person is buying under a contract, with the contract or a memorandum of the contract recorded in the county recorder's office, which provides that the person is to pay the property taxes on the real property, mobile home, or manufactured home; or

(3) real property, a mobile home that is not assessed as real property, or a manufactured home that the person owns or is buying on a contract described in subdivision (2) on which the person has a home equity line of credit that is recorded in the county recorder's office.

The bill amends Ind. Code § 6-1.1-12-45, Applicability of deduction for assessment date, to provide that a person who fails to apply for a deduction or credit under this

article by the deadlines prescribed by this article may not apply for the deduction or credit retroactively.

The bill also provides that if a person who is receiving a deduction under section 1 of this chapter subsequently refinances the property, desires to continue claiming the deduction, and remains eligible for the deduction, the person must reapply for the deduction for the following assessment date.

A person who is required to record a contract with a county recorder in order to qualify for a deduction under this article must record the contract, or a memorandum of the contract, before, or concurrently with, the filing of the corresponding deduction application.

Before a county auditor terminates a deduction under this article, the county auditor shall give to the person claiming the deduction written notice that states the county auditor's intention to terminate the deduction and the county auditor's reason for terminating the deduction. The county auditor may send the notice to the taxpayer claiming the deduction by first class mail or by electronic mail. A notice issued under this subsection is not appealable under IC 6-1.1-15. However, after a deduction is terminated by a county auditor, the taxpayer may appeal the county auditor's action under IC 6-1.1-15.

TITLING AND PERFECTION

Georgia
Certificates of title – Electronic submission

2017 GA H 412. Enacted 5/9/2017. Effective 1/1/2018.

Amends Ga. Code Ann. § 40-3-33, relating to transfer of vehicle to or from dealer and records to be kept by dealers, by adding a new subsection to read as follows:

(d) On and after January 1, 2018, all applications for certificate of title by a motor vehicle dealer shall be submitted to the department electronically. The department may adopt rules and regulations to administer this subsection.

LEGISLATION
Minnesota
Affixation - Severance

2017 MN H 3 a. Enacted 5/30/2017. Effective 7/1/2017.

This bill amends Minn. Stat. § 168A.141 to provide that, when a manufactured home is to be affixed or is affixed to real property, the owner of the manufactured home may surrender the manufacturer's certificate of origin or certificate of title to the department for cancellation so that the manufactured home becomes an improvement to real property and is no longer titled as personal property.

Formerly, this section provided that a manufactured home is affixed to real property, and financed by the giving of a mortgage on the real property, the owner of the manufactured home shall surrender the manufacturer's certificate of origin or certificate of title to the department for cancellation. The owner of the manufactured home shall give the department the address and legal description of the real property. The department may require the filing of other information.

The bill provides for the required content of an affidavit of affixation by the owner of the manufactured home and Subd. 1a provides the form of the affidavit.

Sund. 2 provides that a perfected security interest prevents surrender (formerly, avoids cancellation). The department may not cancel a certificate of title if, under this chapter, a security interest has been perfected on the manufactured home. If a security interest has been perfected, the department must notify the owner that each secured party must release or satisfy the security interest prior to proceeding with surrender of the manufacturer's certificate of origin or certificate of title to the department for cancellation. Permanent

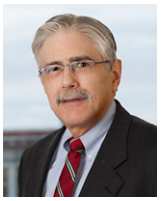
attachment to real property or the recording of an affidavit of affixation does not extinguish an otherwise valid security interest in or tax lien on the manufactured home, unless the requirements of section 168A.141, subdivisions 1, 1a, and 2, including the release of any security interest, have been satisfied.

Subd. 3 provides that, when a perfected security interest exists, or will exist (adding, "or will exist"), on the manufactured home at the time the manufactured home is affixed to real property, and the owner has not satisfied the requirements of section 168A.141, subdivision 1, the owner of the manufactured home, or its secured party (adding, "or its secured party"), may record a notice with the county recorder, or with the registrar of titles, if the land is registered, stating that the manufactured home located on the property is encumbered by a perfected security interest and is not an improvement to real property (adding, "and is not an improvement to real property").

The bill also amends Minn. Stat. § 168A.142 re: the process for a manufactured home unaffixed from realty, including the evidence of eligibility for reissuance of a certificate of title and the form of the required affidavit.

The bill adds Minn. Stat. § 168A.143, MANUFACTURED HOMES; OWNERSHIP AT ISSUE, to provide the requirements for a certificate issuance or reissuance when an applicant is unable to obtain from or locate previous owners no longer holding an interest in the manufactured home based on a certificate of title, or to locate, obtain, or produce the original certificate of origin or certificate of title for a manufactured home, and there is no evidence of a surrendered certificate of title or manufacturer's statement of origin as provided in section 168A.141, subdivision 1, which has not otherwise been unaffixed or is being unaffixed.

That section also provides that a security interest perfected under this chapter may be canceled seven years from the perfection date for a manufactured home, upon the request of the owner of the manufactured home, if the owner has paid the lien in full or the lien has been abandoned and the owner is unable to locate the lienholder to obtain a lien release. The owner must send a letter to the lienholder by certified mail, return receipt requested, stating the reason for the release and requesting a lien release. If the owner is unable to obtain a lien release by sending a letter by certified mail, then the owner must present to the department the returned letter as evidence of the attempted contact, or the acknowledgment of receipt of the letter, together with a copy of the letter and an owner affidavit of nonresponse.



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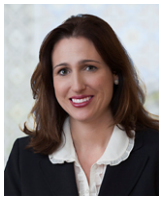

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ABOUT MHI:

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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