McGLINCHEY STAFFORD

MHI Manufactured Housing Institute

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

WELCOME!

Greetings MH fans. We hope you are enjoying summer and now you have the Manufactured Housing Law Update for your beach reading.

Since this update is not a sports column and does not generally cover happenings in the SEC, the only thing that happened in Mississippi last month that is worth reporting on are two manufactured home valuation cases in the bankruptcy setting.

If you are a lender and have steered clear of the "Show Me State" because of its onerous in-state office requirement, you should read on. Said differently, Missouri eliminated its SAFE Act's in-state office requirement for manufactured housing lenders.

If you charge convenience fees in connection with payments, review the CFPB's UDAAP guidance/warning on those practices.

Finally, if you file applications for Statements of Ownership, read the warning from the Texas Department of Housing and Community Affairs regarding failure to include the original Manufacturer's Certificate. If you don't, you may be SOL.

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ARBITRATION

CASE LAW

Validity

CASE NAME: *Kindred Nursing Ctrs. Ltd. P'ship v. Clark*
DATE: *05/15/2017*
CITATION: *Supreme Court of the United States. 137 S.Ct. 1421*

The U.S. Supreme Court concluded that Kentucky's "clear-statement" rule violates the Federal Arbitration Act because it singles out arbitration agreements and treats them differently from other contracts.

The Kentucky Supreme Court had held that the arbitration agreements at issue were invalid because the individuals who entered into the agreements did so under a power of attorney and the powers of attorney at issue did not specifically entitle the representatives to enter into an arbitration agreement.

CASE LAW

Waiver

CASE NAME: *Madden v Ally Fin., Inc.*
DATE: *06/09/2017*
CITATION: *United States District Court, E.D. Kentucky. 2017 WL 2403564*

The Court held that Ally did not waive its right to compel arbitration by waiting four months after filing its answer to the complaint that did not include the arbitration agreement as a specific affirmative defense. Ally did, however, generically deny jurisdiction and venue in its answer.

COMMUNITIES

CASE LAW

Eviction - Notice

CASE NAME: *Shires Housing, Inc. v. Brown*
DATE: *07/21/2017*
CITATION: *Supreme Court of Vermont. --- A.3d ----. 2017 WL 3097842*

Tenant and her cotenant leased a lot in landlord's Willows Mobile Home Park. Tenant's lease prohibited "any criminal activity including illegal drug-related activity on or near the premises" and stated that "such criminal activity shall be cause for termination of the tenancy." The lease also required the park owner or manager to "provide the [r]esident with written notice of the reason for an intended eviction." It was undisputed that landlord did not provide written notice prior to initiating the eviction proceedings.

The trial court denied tenant's motion to dismiss, ruling that Vt. Stat. Ann. tit. 10, § 6237(a) unambiguously contains an exception to the notice requirement when a tenant causes a substantial violation of the lease terms. Tenant appealed.

The appeals court found that the statute starts with the premise that all mobile home park eviction actions must be preceded by notice, unless an exception to the notice requirement applies.

The exception in subsection (3) provides that "[a] substantial violation of the lease terms, of the mobile home park, or an additional nonpayment of rent occurring within six months of the giving of the notice referred to in subdivision (2) of this subsection may result in immediate eviction proceedings."

According to the Court, subsection (3) is unclear about whether the phrase "occurring within six months" refers only to "an additional nonpayment of rent" or if it also applies to "[a] substantial violation of the lease terms."

Had the Legislature intended to give the statute the meaning landlord suggested, it would have been more logical to place the exception that landlord sought—no notice required following a substantial lease violation—in its own subsection, instead of placing it with an exception that is triggered only after the leaseholder has engaged in an "additional" violation "within six months." Likewise, to read the statute as landlord suggested would read the word "any" out of § 6237(a)(2), which says "[p]rior to the commencement of any eviction proceeding, the park owner shall notify the leaseholder." It would not be logical to first say that all evictions, including those for substantial violations, must be done with notice, and then say that ones for substantial violations do not need notice.

Further, Housing Division Rules Part I: Mobile Home Parks, Code of Vt. Rules 11 020 001, interprets § 6237 to mean that a landlord is not required to give a tenant notice of eviction when the tenant commits a second substantial violation within six months. The Department's interpretation provides clarity by stating "[n]o notice shall be required if the nonpayment of rent or a substantial violation is the second such occurrence within 6 months." Rule 12.2.1.

The Court found that the Department Rule aligns with the purpose of the Mobile Home Parks Act—to provide additional protections for mobile home owners due to the limited availability of space and the high cost of relocating mobile homes.

Reversed.

LEGISLATION

Connecticut

Security deposit – Older tenants

2017 CT H 7019. Enacted 7/11/2017. Effective 10/1/2017.

This bill amends Conn. Gen. Stat. § 47a-21 to add that any landlord who has received a security deposit in an amount that exceeds one month's rent from a tenant who becomes sixty-two years of age after paying such security deposit shall return the portion of such security deposit that exceeds one month's rent to the tenant upon the tenant's request.

PROPOSED RULE

Massachusetts

Minimum standards of fitness

This rule amends 105 Mass. Code Regs. 410.000: State Sanitary Code Chapter II: Minimum Standards of Fitness for Human Habitation, including 105 Mass. Code Regs. 410.003, General Provisions, to add that, unless otherwise specified in 105 Mass. Code Regs. 410.000, the owner is responsible for providing all maintenance, repairs, and equipment necessary to achieve compliance with 105 Mass. Code Regs. 410.000. The rule makes changes throughout Chapter 410 and adds several new sections.

The rule also amends 105 Mass. Code Regs. 435.000 et seq.: Minimum Standards for Swimming Pools (State Sanitary Code: Chapter V).

LEGISLATION

Minnesota

Fees

2017 MN S 2 a. Enacted 5/30/2017. Effective 7/1/2017.

This bill amends Minn. Stat. § 327.15 , subdivision 3, to increase the fee for licensing a manufactured home park from $150 to $165.

The bill also increases the fee for each licensed site in a manufactured home park from $4 to $5.

LEGISLATION

North Carolina

Natural gas service

2017 NC H 799. Enacted 7/21/2017. Effective immediately.

This bill amends N.C. Gen. Stat. § 42‑42.1 to provide that a lessor, (formerly, landlord) may charge for the cost of providing water or sewer service to lessees (formerly, tenants) pursuant to N.C. Gen. Stat. § 62 110(g), electric service pursuant to N.C. Gen. Stat. § 62 110(h), or natural gas service pursuant to N.C. Gen. Stat. § 62 110(i) (adding, natural gas service).

The lessor (formerly, landlord) may not disconnect or terminate the lessee's (formerly, tenant's) electric service, water or sewer services, or natural gas service (adding, natural gas service) due to the lessee's nonpayment of the amount due for electric service, water or sewer services, or natural gas service.

In addition to the authority to issue a certificate of public convenience and necessity and establish rates otherwise granted in this Chapter, the Commission may, consistent with the public interest, adopt procedures that allow a lessor of a single family dwelling (adding, single-family dwelling), residential building, or multiunit apartment complex that has individually metered units for electric service in the lessor's name to charge for the actual costs of providing electric service to each lessee.

The bill adds that an applicant may submit for authority to charge for electric service for more than one property in a single application. Information relating to all properties covered by the application need only be provided once in the application.

The bill also adds that, in addition to the authority to issue a certificate of public convenience and necessity and establish rates otherwise granted in this Chapter, the Commission may, consistent with the public interest, adopt procedures that allow a lessor of a single‑family dwelling, a residential building, or multiunit apartment complex that has individually metered units for natural gas service in the lessor's name to charge for the actual costs of providing natural gas service to each lessee. The bill includes the provisions that shall apply to the charges authorized under this subsection, including:

The lessor shall equally divide the actual amount of the individual natural gas service bill for a unit among all the lessees in the unit and shall send one bill to each lessee. The amount charged shall be prorated when a lessee has not leased the unit for the same number of days as the other lessees in the unit during the billing period. Each bill may include an administrative fee up to the amount of the then‑current administrative fee authorized by the Commission in Rule 18‑6 for water service and, when applicable, a late fee in an amount determined by the Commission. The lessor shall not charge the cost of natural gas service from any other unit or common area in a lessee's bill. The lessor may, at the lessor's option, pay any portion of any bill sent to a lessee.

A lessor who charges for natural gas service under this subsection is solely responsible for the prompt payment of all bills rendered by the natural gas utility providing service to the leased premises and is the customer of the natural gas utility.

The lessor shall maintain records for a minimum of 36 months.

Bills for natural gas service sent by the lessor to the lessee shall contain certain, required information.

The Commission shall develop an application that lessors must submit for Commission approval to charge for natural gas service as provided in this section.

The Commission shall approve or disapprove an application within 60 days of the filing of a completed application with the Commission. If the Commission has not issued an order disapproving a completed application

within 60 days, the application shall be deemed approved.

A lessor who charges for natural gas service under this subsection shall not be required to file annual reports pursuant to N.C. Gen. Stat. § 62‑36.

An applicant may submit for authority to charge for natural gas service for more than one property in a single application. Information relating to all properties covered by the application need only be provided once in the application.

The Commission shall adopt rules to implement the provisions of this subsection.

DEFAULT SERVICING

CASE LAW

Foreclosure – Statute of limitations

CASE NAME: *Klebanoff v. Bank of New York Mellon*
DATE: *06/30/2017*
CITATION: *District Court of Appeal of Florida, Fifth District. --- So.3d ----. 2017 WL 2818078*

On June 26, 2014, the Bank of New York Mellon filed a mortgage foreclosure complaint against the Klebanoffs, alleging that "[t]here [was] a default under the terms of the Note and Mortgage for the March 1, 2009 payment and all subsequent payments due thereafter." The complaint further alleged that the Bank was "declar[ing] the full amount payable under the Note and Mortgage." The Klebanoffs filed an answer generally denying the allegations of the complaint and raising the statute of limitations as an affirmative defense. At trial, the Bank presented evidence reflecting that the Klebanoffs had failed to make the March 1, 2009 payment and any payment thereafter. The trial court entered a final judgment in favor of the Bank, and this appeal followed.

The Klebanoffs argued that pursuant to the decision in *Hicks v. Wells Fargo Bank, N.A.*, 178 So.3d 957 (Fla. App. 2015), the trial court was constrained to dismiss the Bank's action based on the applicable five-year statute of limitations in Fla. Stat. § 95.11(2)(c). The Court found, however, that, contrary to the Klebanoffs' contention, *Hicks* was distinguishable. In *Hicks*, although the complaint alleged that the mortgagors were in a continuing state of default, the parties proceeded to trial on stipulated facts that referenced only the initial default.

By contrast, in this case, the Bank both alleged and proved that the Klebanoffs had defaulted on each and every mortgage payment from March 1, 2009, and onward. Because the Bank alleged and proved missed payments within the five years prior to the filing of its complaint, its action was not barred by the statute of limitations.

Affirmed.

CASE LAW

Foreclosure – Statute of limitations

CASE NAME: *Huntington National Bank v. Watters*
DATE: *06/30/2017*
CITATION: *District Court of Appeal of Florida, Second District. --- So.3d ----. 2017 WL 2821551*

On February 24, 2015, Huntington initiated a second action to foreclose on Watters's property, alleging the same default dates indicated in the first action, "August 1, 2007, and all subsequent payments." In his answer, Watters asserted numerous affirmative defenses, including that the statute of limitations had run in 2012. The trial court granted summary judgment for Watters, basing its decision solely upon a finding that the action was barred by the statute of limitations.

The appeals court found that, as Huntington's complaint had asserted a "continuing state of default" since August 1, 2007, Huntington had the right to foreclose for each default which was within the statutory period, and the action was therefore not barred.

Reversed.

CASE LAW

Bankruptcy – Modification

CASE NAME: *In re Garcia*
DATE: *06/30/2017*
CITATION: *United States Bankruptcy Court, N.D. Texas, Lubbock Division. Slip Copy. 2017 WL 2859756*

The chapter 13 plan of the debtors provided for the bifurcation of the claim of PrimeWest Mortgage Corporation into two claims, a secured claim of $25,000.00 and an unsecured claim of $31,283.91. PrimeWest objected, contending that bifurcation was improper because its lien covered real property on which the Garcias' residence was located. The plan stated that PrimeWest's debt was secured by their "principal residence (realty only)" and that such debt "contractually matures before the final plan payment is due. As such, [the] debt is not subject to the anti-modification provisions of 11 USC Sec. 1322(b)(2)."

PrimeWest made two arguments. First, that the payment term, and not the nature of the claim, may be modified. Second, that if bifurcation was an allowable modification under § 1322(b)(2), only the claim secured by the manufactured home itself, which is personalty, may be bifurcated. This was based on a strict reading of § 1322(b)(2), which provides that a chapter 13 debtor may "modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence ...." The anti-modification rule (or exception) therefore applies explicitly to a claim secured by "real property that is the debtor's principal residence" and not to personalty.

The Court noted that neither the Garcias nor PrimeWest accounted for the Code's definition of "debtor's principal residence," the critical phrase employed at §§ 1322(b)(2) and (c)(2) of the Code. Section 101(13)(A) defines the debtor's principal residence as a "residential structure" that is used as the principal residence of the debtor and "without regard to whether that structure ... is attached to real property." The definition specifically includes a mobile or manufactured home. And then, to reiterate from § 1322(b)(2), the anti-modification proviso specifically applies to a "claim secured only by ... property that is the debtor's principal residence." Here, PrimeWest's lien does not cover the manufactured home that is the "residential structure." The anti-modification provision of § 1322(b)(2) applies to real property that is the debtor's principal residence. As PrimeWest argued, under Texas law, a manufactured home is personal property. Its lien covered only the realty; its secured claim was not secured by "a security interest in real property that is the debtor's principal residence." Thus the Court found that both the anti-modification exception of § 1322(b)(2) and its exception, § 1322(c)(2), were inapplicable. The Garcias were therefore free to propose a plan that modified PrimeWest's secured claim. Such modification may provide for bifurcation of the claim if the claim is undersecured.

The Court found it had no credible, reliable evidence of the property's value. Value was too critical to the rights of both parties (and potentially to the feasibility of the plan) for the Court to simply guess at a value or to assess a value by default. Accordingly, the Court will set a status hearing on valuation at which it will, if necessary, hear admissible and reliable evidence of value of PrimeWest's collateral.

CASE LAW

Bankruptcy – Value of collateral

CASE NAME: *21st Mortgage Corp. v. Glenn*
DATE: *07/07/2017*
CITATION: *United States District Court, N.D. Mississippi, Aberdeen Division. Slip Copy. 2017 WL 2912474*

Glenn filed Chapter 13. 21st Mortgage held a perfected, first-priority, purchase money security interest in Glenn's mobile home. In her Chapter 13 plan, Glenn proposed to retain the mobile home and to pay 21st Mortgage the value of the home plus five percent interest over the life of the plan. The parties stipulated that the value of the home was $21,900 not including costs for delivery and setup. The record reflected that cost for delivery and setup for this mobile home was $4,000.

21st Mortgage objected to the valuation and requested that the Bankruptcy Court include the delivery and setup costs. The Bankruptcy Court overruled 21st Mortgage's objection and 21st Mortgage appealed.

The Court rejected 21st Mortgage's assertion that under 11 U.S.C. § 506 (a)(2), an individual debtor is required to include a retail valuation of personal property in its current condition "without deduction for costs of sale and marketing," and that failing to include delivery and setup costs in the valuation of a mobile home deprives the creditor of the full retail value as contemplated by the statute.

First, the first part of subsection (a)(2) calls for a valuation using "replacement value" and not retail value. Second, the mobile home in this case fell under the second portion of subsection (a)(2) as "property acquired for personal, family, or household purposes." Notably, the phrase "without deduction for costs of sale or marketing" is conspicuously absent from this second portion of the subsection.

Looking at the statutory language in 11 U.S.C. § 506, the Court determined that it was appropriate to consider the "proposed disposition or use" of the property in the valuation. This is particularly important in the instant case because under the proposed Plan, Glenn's "proposed use" was that she would maintain possession of the mobile home so there would be no delivery or set up.

The Court also noted that this conclusion comports with equitable concerns and common sense. When a mobile home purchaser finances the full amount of the home including setup and delivery costs, the financer's risk is secured only by the value of the collateral, the home. The costs of setup and delivery are in excess of the collateral's value. In essence, 21st Mortgage was arguing to secure a portion of their claim that was never secured by collateral.

Affirmed.

CASE LAW

Foreclosure – SCRA

CASE NAME: *Sibert v. Wells Fargo Bank, N.A.*
DATE: *07/17/2017*
CITATION: *United States Court of Appeals, Fourth Circuit. --- F.3d ----. 2017 WL 3013008*

While serving in the U.S. Navy, Richard Sibert obtained a loan secured by a mortgage to purchase a house. Soon after his discharge from the Navy, he defaulted on the loan, and the lender began foreclosure proceedings. During those proceedings, however, and before any foreclosure sale was held, Sibert enlisted in the U.S. Army. The lender continued to pursue foreclosure and sold Sibert's house at a foreclosure sale shortly after Sibert had begun his service in the Army.

Sibert commenced this action against Wells Fargo Bank, N.A., alleging that the foreclosure sale was invalid under the Servicemembers Civil Relief Act ("SCRA"), which requires a lender to obtain a court order before foreclosing on or selling property owned by a current or recent servicemember where the mortgage obligation "originated before the period of the servicemember's military service." 50 U.S.C. § 3953(a). As reported in the May 2016 McGlinchey Stafford Manufactured Housing Law Update, the district court granted summary judgment to Wells Fargo, concluding that, because Sibert

incurred his mortgage obligation during his service in the Navy, the obligation was not subject to SCRA protection.

The court found that "the specific context of the language indicates that the statute does not apply to obligations incurred while one is in the military, because the underlying concern is the impact military service may have on a servicemember's income and status, uncontemplated at the time when they incurred the obligation." Sibert appealed.

The appeals court found that § 3953(a) grants protection to obligations incurred outside of military service, while denying protection to obligations originating during the servicemember's military service. In this case, Sibert's obligation originated while he was in the Navy and therefore was not in the class of obligations protected by the statute.

Affirmed.

CASE LAW

Bankruptcy – Value of collateral

CASE NAME: *In re Munro*
DATE: *07/24/2017*
CITATION: *United States Bankruptcy Court, S.D. Mississippi. Slip Copy. 2017 WL 3141917*

Munro filed Chapter 13 and scheduled his interest in a 2013 Southern Estates 32 x 58 Mobile Home. Munro objected to the secured claim of 21st Mortgage Corporation, proposing to pay the value of its collateral plus 5% interest. 21st Mortgage filed a proof of claim for a prepetition debt of $84,132.51 secured by Munro's mobile home and valuing its collateral at the amount of its debt. 21st Mortgage objected to confirmation of Munro's plan, arguing that Munro had undervalued its collateral.

Munro testified that his home was worth about $50,000 and elaborated as to its condition. He also offered, as exhibits, printouts from 21st Mortgage's website showing the value of other similar mobile homes. 21st Mortgage objected to the printouts as hearsay. 21st Mortgage also offered the testimony of its appraiser, William Pendergraft, that, based on the cost of necessary repairs, the condition of the mobile home, and the additional components and accessories, the mobile home was worth $71,347.

The Court determined that the values listed for the manufactured homes on 21st Mortgage's website were statements within the meaning of Federal Rule of Evidence 801. Further, the Court found that because 21st Mortgage did not contest that it was the owner of the website, these statements were statements of a party opponent and excluded from the definition of hearsay. However, the Court found that the exhibits demonstrated values of manufactured homes too dissimilar to Munro's to be of much probative value. The Court accepted Munro's testimony that his home was worth $50,000 as probative but not conclusive evidence of value.

Pendergraft reached his valuation using the National Appraisal System ("NAS") form with the NADA price guide to come up with a base value for Munro's home.

The Court accepted Pendergraft's valuation, with some exceptions.

First, the Court questioned the absence of a bill of sale related to certain add-ons, "[t]he AC unit, skirting and steps." The bill of sale was not attached to 21st Mortgage's proof of claim, and Pendergraft testified that he never saw an invoice showing these items were sold with the home.

Second, the Court found the estimated repair costs to be insufficient to resolve and remediate the undisputed problems with the home. Therefore, using the corrected estimated repair coast, the Court multiplied the overall repair estimate by four.

After reducing the value of the home for the unproven cost of the add-ons ($1,361.08) and the increased cost of repairs ($9,600 - $2,245), the Court found that Munro's home and 21st Mortgage's collateral had a value of $62,630.92.

LEGISLATION
Missouri
Convenience fees

2017 MO H 292. Enacted 7/11/2017. Effective 8/28/2017.

This bill amends Mo. Rev. Stat. § 362.111 to provide that a bank may impose a convenience fee for payments using an alternative payment channel that accepts a debit or credit card not present transaction, non-face-to-face payment, provided that:

(a) The person making the payment is notified of the convenience fee; and

(b) The fee is fixed or flat, except that the fee may vary based upon method of payment used.

The bill amends Mo. Rev. Stat. § 365.160, under the Missouri Motor Vehicle Time Sales Law, to provide that a holder of a contract may impose a convenience fee for payments using an alternative payment channel that accepts a debit or credit card not present transaction, non-face-to-face payment, provided that:

(a) The person making the payment is notified of the convenience fee; and

(b) The fee is fixed or flat, except that the fee may vary based upon method of payment used.

The bill similarly amends Mo. Rev. Stat. § 408.140, under the Consumer Loan Act, and Mo. Rev. Stat. § 408.330, under the Missouri Retail Credit Sales Law, to permit a convenience fee for payments using an alternative payment channel that accepts a debit or credit card not present transaction, non-face-to-face payment, provided that:

(a) The person making the payment is notified of the convenience fee; and

(b) The fee is fixed or flat, except that the fee may vary based upon method of payment used.

LEGISLATION
New Jersey
Servicers – Short sales

2016 NJ A 2060. Enacted 7/21/2017. Effective 9/19/2017.

This bill amends and supplements New Jersey's "Fair Foreclosure Act," N.J. Stat. Ann. §§ 2A:50-53-1 et seq., to require residential mortgage loan servicers to engage in consultations on short sales with prospective buyers, and to respond to short sale offers from buyers within certain time periods.

"Servicer" means the person, corporation or other entity responsible for servicing a residential mortgage loan, including a residential mortgage lender who makes or holds a loan if the lender also services the loan.

The bill requires a mortgage loan servicer to respond to a good faith offer from a seller, seller's agent, or authorized third party to purchase the property through a short sale within 60 days of the date of the offer. A response would include an approval, a denial, or a request for further information. If the servicer decides not to approve a short sale, or fails to respond to the seller's, seller's agent's, or authorized third party's offer within 60 days, any deposit made by the buyer in connection with the purchase of the property shall be refunded in its entirety and the potential purchaser shall have no further obligation with respect to the sale or other disposition of the property.

Nothing in the bill constituted a limitation on the ability of the servicer and debtor to participate in the New Jersey Judiciary's Foreclosure Mediation Program or any other form of mediation or settlement discussion, or enter into an agreement as a result of that mediation or settlement discussion.

BULLETIN

CFPB

Phone pay fees

Issued 7/25/2017.

Compliance Bulletin 2017-01: Phone Pay Fees.

The CFPB issued this Compliance Bulletin to provide guidance to covered persons and service providers regarding fee assessments for pay-by-phone services and the potential for violations of sections 1031 and 1036 of the Dodd-Frank Wall Street Reform and Consumer Protection Act's prohibition on engaging in unfair, deceptive, or abusive acts or practices when assessing phone pay fees. This Bulletin also provides guidance to debt collectors about compliance with the FDCPA when assessing phone pay fees.

Depending on the facts and circumstances, the following non-exhaustive list of examples of conduct related to phone pay fees may constitute UDAAPs or contribute to the risk of committing UDAAPs. Accordingly, the Bureau will be watching these practices closely:

Failing to disclose the prices of all available phone pay fees when different phone pay options carry materially different fees;

Misrepresenting the available payment options or that a fee is required to pay by phone;

Failing to disclose that a phone pay fee would be added to a consumer's payment could create the misimpression that there was no service fee;

Lack of employee monitoring or service provider oversight may lead to misrepresentations or failure to disclose available options and fees.

HUD

ANNOUNCEMENT

Lois Starkey

On July 26, HUD announced that Lois Starkey joined the Office of Manufactured Housing Programs as a Management Analyst.

INSTALLATION

ADOPTED RULE

Delaware

Crimes

Effective 8/11/2017, this rule amends 24 Del. Admin. Code §§ 4400-1.0 et seq., pertaining to crimes substantially related to the practice of manufactured home installation, as well as a provision on qualifying education.

The rule amends 24 Del. Admin. Code § 4400-4.1 to provide that completion of the HUD certification course satisfies the Delaware requirement that all applicants for licensure as a manufactured home installer successfully complete a Board-approved course.

The rule provides that training courses must provide at least twelve (12) (formerly, 15) hours of education.

The rule amends 24 Del. Admin. Code § 4400-16.0, Crimes Substantially Related to the Practice of Manufactured Home Installation or Installation Inspection, by removing from the list of crimes, or the attempt to commit, or of a conspiracy to commit or conceal or of solicitation to commit, the conviction of which is deemed to be substantially related to the

practice of manufactured home installation or manufactured home installation inspection in the State of Delaware, without regard to the place of conviction:

Criminal Penalties, Organized Crime and Racketeering. 11 Del.C. § 1504

Prohibited Acts A; penalties. 16 Del.C. § 4751

Prohibited Acts B; penalties. 16 Del.C. § 4752

Unlawful delivery of non-controlled substance. 16 Del.C. § 4752A

Prohibited Acts C; penalties. 16 Del.C. § 4753

Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, Lysergic Acid Diethylamide (L.S.D.), designer drugs, or 3,4- methylenedioxy-methamphetaminie (MDMA). 16 Del.C. § 4753A

Prohibited acts D; penalties. 16 Del.C. § 4754

Possession and delivery of non-controlled prescription drug. 16 Del.C. § 4754A

Prohibited acts; penalties. 16 Del.C. § 4756

Hypodermic syringe or needle; delivering or possessing; disposal; exceptions; penalties. 16 Del.C. § 4757

Distribution to persons under 21 years of age; penalties. 16 Del.C. § 4761

Purchase of drugs from minors; penalties. 16 Del.C. § 4761A

Distribution, delivery, or possession of controlled substance within 1,000 feet of school property; penalties; defenses. 16 Del.C. § 4767

Distribution, delivery or possession of controlled substance in or within 300 feet of park, recreation area, church, synagogue or other place of worship; penalties; defenses. 16 Del.C. § 4768

Drug paraphernalia. 16 Del.C. § 4771(a) and (b)

Penalties [drug paraphernalia]. 16 Del.C. § 4774

Criminal Penalties [for violation of §6003 or Regulations]. 7 Del.C. § 6013

The rule adds:

Criminal impersonation of a police officer, firefighter, emergency medical technician (EMT), paramedic or fire police. 11 Del.C. §907B (formerly, this referred only to a police officer).

ADOPTED RULE

New York

IRC – Appendix E

Effective 10/31/2017, this rule adopts amendments to 2015 IRC, Appendix E (Manufactured Housing Used as Dwellings).

The U.S. Department of Housing and Urban Development's (HUD) Manufactured Home Construction and Safety Standards (24 CFR Part 3280) establishes federal standards for the design, construction, and installation of manufactured homes to assure their quality, durability, safety, and affordability. Backed by federal mandate, HUD's standards preempt state and local laws that do not conform to the federal requirements. HUD's standards are applicable to all manufactured homes produced after June 15th, 1976.

HUD's Model Manufactured Home Installation Standards (24 CFR Part 3285) establish the minimum standards for installation of manufactured homes. States are permitted to operate a manufactured home installation program provided that the installation requirements of such program are at least as restrictive as the comparable requirements found in HUD's minimum standards. In the absence of an approved State program, HUD assumes administration and enforcement responsibilities. New York's manufactured home installation requirements are found in Appendix E of the 2015 International Residential Code (IRC), as modified by the 2016 Uniform Code Supplement (Supplement).

The provisions of Appendix E, applicable to manufactured homes used as a single dwelling unit, apply to the following categories of work:

1. Construction, alteration and repair of any foundation system which is necessary to provide for the installation of a manufactured home unit.

2. Construction, installation, addition, alteration, repair or maintenance of the building service equipment which is necessary for connecting manufactured homes to water, fuel, or power supplies and sewage systems.

3. Alterations, additions or repairs to existing manufactured homes.

In a June 30th, 2016 letter addressed to the Division of Building Standards and Codes, HUD stated that New York's manufactured home installation standards (Appendix E) must be revised to be at least as restrictive as the standards contained in 24 CFR Part 3285. Failure to comply with 24 CFR 3286.804 will result in New York surrendering its Manufactured Housing Program to the federal government.

A few of the more significant modifications to Appendix E include:

• Ensuring that building additions and accessory structures are not structurally supported by the manufactured home,

• Definitions for the terms, Design Approval Primary Inspection Agency (DAPIA), HUD, Installation Instructions, and Manufacturer's Certification Label,

• Modifications to the installation requirements, including provisions for installation instructions, footings and foundations, site drainage, and under-floor clearances, and

• Updated reference standards (28 CFR Part 3285, Model Manufactured Home Installation Standards and NFPA 225-2013, Model Manufactured Home Installation Standard).

NOTICE OF DRAFTING

South Carolina

24 CFR Parts 3285 and 3296

The South Carolina Manufactured Housing Board proposes to amend S.C. Code Ann. Regs. 79-42 relating to installation consistent with the regulations promulgated by the Department of Housing and Urban Development and set forth in 24 CFR Parts 3285, the Model Manufactured Home Installation Standards, and 3296, the Manufactured Home Installation Program.

Interested persons may submit written comments to Roger Lowe, Administrator, Manufactured Housing Board, South Carolina Department of Labor, Licensing and Regulation, Post Office Box 11329, Columbia, SC 29211.

PROPOSED RULEMAKING

HUD

24 CFR Parts 3280, 3285, 3286

Advance Notice of Proposed Rulemaking.

Consistent with the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended, this document invites interested persons to submit proposed changes to update and revise HUD's Manufactured Home Construction and Safety Standards, its Manufactured Home Procedural and Enforcement Regulations, its Model Manufactured Home Installation Standards, and its Manufactured Home Installation Program Regulations. Proposed changes will be submitted to the Manufactured Housing Consensus Committee (MHCC) for review and consideration as part of its responsibility to provide periodic recommendations to HUD to adopt, revise, and interpret the HUD standards and regulations.

DATES: To ensure consideration, the deadline for submitting proposed changes from the public for the 2018-2019 review period is December 31, 2017. Any Proposals received after December 31, 2017 will be held until the 2020-2021 review period.

ADDRESSES: Proposed changes to the Manufactured Home Construction and Safety Standards, Procedural and Enforcement Regulations, Model Installation Standards, and Installation Program Regulations are to be submitted using the following URL address: mhcc.homeinnovation.com or mailed to Home Innovation Research Labs, 400 Prince Georges Blvd., Upper Marlboro, MD 20774, Attention: Kevin Kauffman.

LENDING

CASE LAW

Home equity loan – Void

CASE NAME: *Morris v. Deutsche Bank National Trust Company*
DATE: *07/18/2017*
CITATION: *Court of Appeals of Texas, Houston (14th Dist.). --- S.W.3d ----. 2017 WL 3045789*

In 2004, the Morrises refinanced their Property by obtaining a home-equity loan from Long Beach Mortgage Company. In January 2006, the Morrises again refinanced the home-equity loan with PHM Financial Incorporated. PHM was aware that the Property was the Morrises' homestead.

PHM's loan was secured by a lien and deed of trust that did not contain the provisions required by Section 50(a)(6) of the Texas Constitution for home-equity loans.

It is undisputed that, because the loan with PHM was a refinance of a home-equity loan, it should likewise have been a home-equity loan that complied with the requirements of the Texas Constitution, Article XVI, Section 50(a)(6).

Deutsche Bank National Trust Company was assigned the loan documents in December 2010. The Morrises failed to make payments. The Property was sold to the Bank at a non-judicial foreclosure sale on August 7, 2012. The Bank also evicted the Morrises.

The Morrises sued the Bank in December 2012. The Morrises' claims included "Violation of the Texas Constitution Article XVI, §§ 50(a)(6)"; "Improper Foreclosure Without a Court Order in violation of TEX. CONST. art. XVI, § 50(a)(6)(D)"; "Slander of Title/Wrongful Eviction"; conversion of personal property and theft; and declaratory judgment.

The Bank filed a no-evidence summary judgment motion. The Bank's primary argument was that the Morrises' claims were barred by the statute of limitations. The trial court granted the motion for summary judgment.

While the case was on appeal, the Supreme Court of Texas announced their decision in *Wood v. HSBC Bank USA, N.A.*, 505 S.W.3d 542, 543 (Tex. 2016), in which the court held that "liens securing constitutionally noncompliant home-equity loans are invalid until cured and thus not subject to any statute of limitations," reversing the court of appeals' holding that constitutionally noncompliant home-equity liens are merely voidable and thus subject to the four-year statute of limitations.

Reversed.

ADOPTED RULE

Ohio

Disclosures

Effective 7/20/2017, this rule amends Appendix A of Ohio Admin. Code 109:4-3-23, re: the required disclosure at the closing of a consumer transaction, to change the form from "CLOSING DISCLOSURE" to "DISCLOSURE OF RIGHT NOT TO CLOSE."

BULLETIN

Tennessee

"Total amount of the loan"

Issued 7/19/2017/

Bulletin C-17-1. Meaning of the term, "Total Amount of the Loan" for the purpose of determining the maximum effective rate of interest that may be charged pursuant to Tenn. Code Ann. §§ 45-5-301(2)(A)(ii) and (iii), under the Tennessee Industrial Loan and Thrift Companies Act.

"Total amount of the loan" is defined at Tenn. Code Ann. § 45-5-102(25) to mean the aggregate amount of money to be paid by a borrower to a registrant to repay a loan, including principal and any interest pre-computed and deducted in the advance. "Principal," is defined at Tenn. Code Ann. § 45-5-102(19) to mean the total of money paid to, received by, or paid or credited to the account of the borrower, including loan charges as provided in § 45-5-403(1), (2) and (3), as applicable, and including insurance charges for which the borrower contract to pay pursuant to § 45-5-305.

ADOPTED RULE

Texas

Contract for deed

Effective 8/3/2017, this rule adds 10 Tex. Admin. Code §§ 23.50 - 23.52, Contract For Deed Program, under the Texas Department of Housing and Community Affairs, which includes provision allowing program funds to be used in connection with the replacement of single family housing units with energy efficient manufactured housing units.

The property assisted must be located in a Colonia as defined in Texas Government Code, Chapter 2306.

ADOPTED RULE

Texas

Homeowner Rehabilitation Assistance Program

Effective 8/3/2017, this rule adopts 10 Tex. Admin. Code §§ 23.30 - 23.32, the Homeowner Rehabilitation Assistance Program.

Program funds may be used for the replacement of existing owner-occupied housing with a Manufactured Housing Unit (MHU) or New Construction of site-built housing on another site contingent upon written approval of the Department.

The rule also provides that, if a housing unit is uninhabitable, within the previous five (5) years from requested assistance, as a result of a natural or man-made disaster or a condemnation order from the unit of local government, or presents an imminent threat to the life, health, or safety of occupants as determined by the local government with jurisdiction over the property, the Household may be eligible for the New Construction of site-built housing or an MHU under this section provided the assisted Household documents that the housing unit was previously their Principal Residence through evidence of a homestead exemption from the local taxing jurisdiction and Household certification. If a housing unit is destroyed due to a disaster (housing unit may no longer be standing on the site), that unit is eligible for Reconstruction provided that the HOME funds are committed within twelve (12) months of the date of destruction.

The Rehabilitation of an MHU is not an eligible use of funds.

Direct Activity Costs, exclusive of Match funds, are limited to, for replacement with an energy efficient MHU: $75,000.

PROPOSED RULE
Texas
Colonia Self-Help Center Program

This rule would adopt 10 Tex. Admin. Code §§ 25.1 - 25.9, concerning the Colonia Self-Help Center Program Rule.

Colonia Self-Help Centers are designed to assist individuals and families of low-income and very low-income to finance, refinance, construct, improve, or maintain a safe, suitable home in the designated Colonia service areas or in another area the Department has determined is suitable.

The rule provides a definition of “Reconstruction” as the demolition and rebuilding a Single Family Housing Unit on the same lot in substantially the same manner. The number of housing units may not be increased; however, the number of rooms may be increased or decreased dependent on the number of family members living in the housing unit at the time of Application. Reconstruction of residential structures also permits replacing an existing substandard unit of manufactured housing with a new or standard unit of housing, ENERGY STAR certified manufactured housing or otherwise.

PROPOSED RULE
Texas
Single Family Programs

This rule would adopt 10 Tex. Admin. Code §§ 20.1 - 20.16, concerning the Single Family Programs Umbrella Rule.

This Chapter sets forth the common elements of the Texas Department of Housing and Community Affairs' (the "Department") single family Programs, which includes the Department's HOME Investment Partnerships Program (HOME), State Housing Trust Fund (SHTF or HTF), Texas Neighborhood Stabilization (NSP), and Office of Colonia Initiatives (OCI) Programs and other single family Programs as developed by the Department. Single family Programs are designed to improve and provide affordable housing opportunities to low-income individuals and families in Texas and in accordance with Chapter 2306 of the Texas Government Code and any applicable statutes and federal regulations. Excluded from this Chapter are loans facilitated by the Department's pass through first-time homebuyer Programs utilizing bond financing structures or mortgage credit certificates.

The rule provides that Single Family Housing Unit means a residential dwelling designed and built for a Household to occupy as its primary residence where single family Program funds are used for rental, acquisition, construction, reconstruction or rehabilitation Activities of an attached or detached housing unit, including Manufactured Housing Units after installation. May be referred to as a single family "home," "housing," "property," "structure," or "unit."

Activity Types for eligible single family housing Activities include the following, as allowed by the Program Rule or NOFA:

(1) rehabilitation, or new construction of Single Family Housing Units;

(2) reconstruction of an existing Single Family Housing Unit on the same site;

(3) replacement of existing owner-occupied housing with a new Manufactured Housing Unit;

(4) acquisition of Single Family Housing Units, including acquisition with rehabilitation and accessibility modifications;

(5) refinance of an existing Mortgage or Contract for Deed mortgage;

(6) tenant-based rental assistance; and

(7) any other single family Activity as determined by the Department.

LICENSING

LEGISLATION

Missouri

Mortgage Brokers – Missouri office

2017 MO H 292. Enacted 7/11/2017. Effective 8/28/2017.

This bill adds new subsection (6) to Mo. Rev. Stat. § 443.812, under the Missouri SAFE Act, to apply only to residential mortgage loan brokers exclusively making loans on manufactured or modular homes, to provide that a residential mortgage loan broker licensed in Missouri shall not be required to maintain a full-service office in Missouri; however, nothing in this subsection shall be construed as relieving a broker of the requirement to be licensed in the state and to obtain a certificate of authority to transact business in the state from the secretary of state.

A residential mortgage loan broker licensed in Missouri who does not maintain a full-service office in Missouri shall file with the license application an irrevocable consent in a form to be determined by the director, duly acknowledged, which provides that, for suits and actions commenced against the broker in the courts of the state and, if necessary, for actions brought against the broker, the venue shall lie in the circuit court of Cole County.

The director may assess the reasonable costs of any investigation incurred by the division that are outside the normal expense of any annual or special examination or any other costs incurred by the division as a result of a licensed residential mortgage loan broker who does not maintain a full-service office in Missouri.

ADOPTED RULE

North Carolina

Manufacturers - Dealers

Effective 7/1/2017, this rule amends 11 N.C. Admin. Code 08.0904.

The rule adds a new subsection re: the licensing of a manufactured set-up contractor and provides that an application for such a license shall include:

(1) the name of the person or business applicant;

(2) the business address of the applicant;

(3) the state under whose laws the applicant firm or corporation is organized or incorporated;

(4) a resume of each owner, partner, or officer of the applicant firm or corporation. Each resume shall state his or her education and a complete job history, as well as a listing of residences for the last seven years;

(5) the type of license applied for;

(6) a signature of the person with authority to legally obligate the applicant;

(7) a statement that the appropriate bond is attached;

(8) a criminal history record check consent form signed by each owner, partner, and officer of the applicant firm or corporation with their initial application and other documentation or materials required by N.C. Gen. Stat. § 143-143.10A; and

(9) the social security number for each owner.

The rule adds that an application for a license as a manufactured housing salesperson shall include the applicant's social security number.

The rule also adds that the Board shall provide applications for renewal of licenses, which shall include the name and address of the applicant, the type of license, the date the license expires, the amount of the license renewal fee, and instructions for completion.

NOTICE OF DRAFTING
South Carolina
Continuing education

The South Carolina Manufactured Housing Board proposes to amend S.C. Code Ann. Regs. 79-6 to require continuing education for license renewal. Three hours of continuing education will be required per year, and the courses must include South Carolina or Federal laws, regulations, and judicial decisions affecting the sale, installation, or repair of manufactured homes. The Board would be charged with approving courses.

Interested persons may submit written comments to Roger Lowe, Administrator, Manufactured Housing Board, South Carolina Department of Labor, Licensing and Regulation, Post Office Box 11329, Columbia, SC 29211.

PRE-PROPOSAL STATEMENT OF INQUIRY
Washington
Installer training and certification

Subject of Possible Rule Making: Amendments to Wash. Admin. Code § 296-150I, Manufactured Home Installer Training and Certification Program.

The factory assembled structures (FAS) program is considering amendments to chapter 296-150I WAC, Manufactured home installer training and certification program as a result of HB 1329 (chapter 10, Laws of 2017), which passed the legislature in 2017. The bill replaces the mandatory penalty of $1,000 for each infraction of manufactured home installation requirements with discretionary authority to issue a monetary penalty of no more than $250 for a first infraction and no more than $1,000 for a second or subsequent infraction. Rulemaking is needed to establish a penalty schedule for infractions for manufactured home installations as required by the bill and to modify the existing rules to comply with the new statutory requirements.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Alicia Curry, Management Analyst, L&I, P.O. Box 44400, Olympia, WA 98504-4400, phone (360) 902-6244, fax (360) 902-5292, email Alicia.Curry@Lni.wa.gov.

MANUFACTURING

FINAL RULE
EPA
Formaldehyde

Effective 8/25/2017. 40 CFR 770.

The EPA is taking direct final action to amend a final rule that was published in the Federal Register on December 12, 2016, concerning formaldehyde emission standards for composite wood products. The amendment will allow compliant composite wood products and finished goods that contain compliant composite wood products that were manufactured prior to December 12, 2017, to be labeled as Toxic Substances Control Act (TSCA) Title VI compliant. This means that regulated composite wood products and finished goods that meet the required formaldehyde emissions standards could be voluntarily labeled as compliant as soon as compliance can be achieved. This will enhance regulatory flexibility and facilitate a smoother supply chain transition to compliance with the rule's broader requirements, as well as promote lower formaldehyde emitting products entering commerce earlier than under the rule as originally published. EPA believes that the amendment is non-controversial and does not expect to receive any adverse comments. However, in addition to this direct final rulemaking, elsewhere in this issue of the Federal Register, EPA is promulgating the amendment as a notice of proposed rulemaking that will be used in the event of

adverse comment on the amendments within this direct final action.

This final rule is effective on August 25, 2017, without further notice, unless EPA receives adverse comment by July 26, 2017. If EPA receives adverse comment, it will publish a timely withdrawal in the Federal Register informing the public that the rule will not take effect.

You may be affected by this direct final rule if you manufacture (including import), sell, supply, or offer for sale hardwood plywood, medium-density fiberboard, particleboard, and/or products containing these composite wood materials in the United States. Potentially affected entities may include:

• Manufactured home (mobile home) manufacturing (NAICS code 321991).

• Other construction material merchant wholesalers (NAICS code 423390), e.g., merchant wholesale distributors of manufactured homes (i.e., mobile homes) and/or prefabricated buildings.

• Manufactured (mobile) home dealers (NAICS code 45393).

TITLING AND PERFECTION

EMERGENCY RULE
California
Waiver Program

Effective 7/25/2017. Expires 10/24/2017.

This rule adds Cal. Code Regs. tit. 25, §§ 5535, 5535.5, 5536, 5536.5, which implement the manufactured home/mobilehome registration Waiver Program. The rule was previously adopted on an emergency basis on 1/23/2017 and reported on in the April Update.

BULLETIN
Texas
Manufacturer's Certificate

Texas Department of Housing and Community Affairs, Manufactured Housing Division, ENFORCEMENT BULLETIN NO. 2017-005. Issued 7/11/2017.

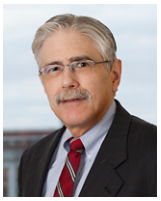
Failing to Submit an Original Manufacturer's Certificate.

A recent review of applications for Statements of Ownership submitted to the Department has revealed a substantial number of applications did not include an original manufacturer's certificate as required by Section 1201.204(c) of the Texas Occupations Code, which states:

After the first retail sale of a manufactured home, the retailer must submit the original manufacturer's certificate for that home to the department.

In the Department's continued efforts to promote self-compliance through education, license holders will be provided with warning letters for any applications for Statements of Ownership received without an original manufacturer's certificate for the months of July and August 2017, giving ample opportunity to correct any internal processes attributing to the problem without penalty.

However, effective September 1, 2017, any applications for Statements of Ownership received without an original manufacturer's certificate will be subject to administrative action including a monetary fine, suspension and/or revocation of the license.



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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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ABOUT McGLINCHEY STAFFORD:

A leader in the manufactured housing and mortgage lending industries, McGlinchey Stafford represents clients in the areas of federal and state law compliance, preemption analysis and advice, nationwide document preparation, licensing support, due diligence, federal and state examination and enforcement action defense, individual and class action litigation defense, and white collar criminal defense.