McGLINCHEY STAFFORD


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

## WELCOME!

January brought a mix of interesting case law, enforcement actions, statutory amendments, and rule making. For example, the CFPB demonstrated that it will continue to pursue disparate impact claims and entered a settlement agreement pursuant to which an indirect auto finance company will change its pricing practices and provide nearly $22 million in restitution. A Tennessee court found that the West Virginia Consumer Credit and Protection Act allows claims for unconscionable inducement. In addition, a Delaware court rejected an increase in lot rent and determined the Rent Justification Act was not unconstitutional.

January had favorable developments as well. The high court of Vermont (of all places) found that a community's refusal to approve an existing tenant's additional occupant, leading to eviction, was proper. Massachusetts' right to cure a default under a residential mortgage or note secured by real property was reduced to 90 days. Finally, a creditor making self-corrections under the Maryland Credit Grantor Closed-End Credit Law precluded consumer claims based on the corrected errors.

These developments plus more in the January update! Read on!

## IN THIS ISSUE

### Contents

## ARBITRATION

**CASE LAW**

**Arbitrability – Void contract**

*CASE NAME:* *Ellis v. JF Enterprises, LLC*
*DATE:* *01/12/2016*
*CITATION:* *Supreme Court of Missouri, en banc. --- S.W.3d ----. 2016 WL 143281*

The Missouri Supreme Court found that, because the FAA makes agreements to arbitrate severable from the other agreements of the parties, courts may only refuse to enforce an arbitration agreement if the party opposing arbitration brings a discrete challenge to the arbitration agreement—and not merely to the underlying or other contemporaneous contract—and shows that the arbitration agreement is invalid under generally applicable state law. Ellis raised no discrete challenge to the arbitration provision distinct from her challenge to the underlying contract. Even though the sale between JF Enterprises and Ms. Ellis may well be void, that question (and the question of her remedies) is for the arbitrator to determine, not the courts.

## CLASS ACTIONS

**CASE LAW**

**Offer of judgment**

*CASE NAME:* *Campbell-Ewald Co. v. Gomez*
*DATE:* *01/20/2016*
*CITATION:* *Supreme Court of the United States. 136 S.Ct. 663*

In this class action case, the U.S. Supreme Court held that Gomez's complaint was not effaced by Campbell's unaccepted offer to satisfy his individual claim. Under basic principles of contract law, Campbell's settlement bid and Rule 68 offer of judgment, once rejected, had no continuing efficacy. With no settlement offer operative, the parties remained adverse; both retained the same stake in the litigation they had at the outset.

## COMMUNITIES

**CASE LAW**

**Eviction – Approved occupant**

*CASE NAME:* *Atkins v. Witham*
*DATE:* *01/01/2016*
*CITATION:* *Supreme Court of Vermont. Not Reported in A.3d. 2016 WL 182413*

The appeals court affirmed the trial court's holding that the lease for a lot in a manufactured home community plainly and unambiguously required that any occupants be "approved by management" and that, based on background and credit checks, the community's refusal to approve an existing tenant's additional occupant, leading to eviction, was proper. The Court rejected the tenant's contention that the community had not uniformly applied the lease terms, finding the community's acceptance of another tenant was not comparable.

**CASE LAW**

**Rent increase – Justification**

*CASE NAME:* *Bon Ayre Community Ass'n, Inc. v. Bon Ayre Land, LLC*
*DATE:* *01/12/2016*
*CITATION:* *Superior Court of Delaware. Not Reported in A.3d. 2016 WL 241864*

The Arbitrator allowed the Bon Ayre manufactured home community to increase lot rent in excess of the Consumer Price Index for All Urban Consumers in the Philadelphia–Wilmington–Atlantic City area ("CPI–U"), based solely on a market rent analysis.

The Court found that 25 Del. C. § 7042(a), of the "Rent Justification Act," defines two conditions that must be met before a rental increase in excess of the CPI–U may

be considered. First, the community owner not have been found in violation of any of the provisions of title 25, chapter 70 related to the health or safety of residents, visitors or guests. Second, the proposed rent increase must be directly related to operating, maintaining, or improving the community and justified by one or more factors in section 7042(c). Any one of the factors in section 7042(c) will justify an increase in rent greater than the CPI–U only if the "proposed rent increase is directly related to operating, maintaining or improving" the community. The arbitrator's decision was not supported by substantial evidence.

The Court found a rent increase above the CPI–U had not been justified. The Court also rejected arguments that the Rent Justification Act was unconstitutional because it was ambiguous, vague and unworkable.

## CASE LAW

**Park closing – Tenant relocation**

*CASE NAME:* *Falkinburg v. Village of El Portal*
*DATE:* *01/13/2016*
*CITATION:* *District Court of Appeal of Florida, Third District. --- So.3d ----. 2016 WL 146004*

Falkinburg, a resident of Little Farm Mobile Home Park, alleged that the Village of El Portal did not comply with the statutory requisites of Fla. Stat. § 723.083 when the Village entered into a Settlement Agreement with the defendants, who were the current and prospective owners of Little Farm. The terms of the Settlement Agreement provided that the Village of El Portal had determined that the residential mobile home park was no longer a permitted use of the property and that it would be "advantageous to demolish and remove the mobile homes existing on the site." The trial court dismissed the complaint with prejudice, finding that the signing of the Settlement Agreement did "not constitute official action which would result in the closure" of Little Farm.

The appeals court reversed, find: (1) this was an official action by a municipality; (2) which action would result in the removal or relocation of mobile home owners; and (3) which action was taken without a prior determination that adequate facilities exist for relocation of the residents.

## CASE LAW

**Conversion to resident-owned**

*CASE NAME:* *Mesa Dunes Mobile Home Estates, LLC v. County of San Luis Obispo*
*DATE:* *01/16/2016*
*CITATION:* *Court of Appeal, Second District, Division 6, California. Not Reported in Cal.Rptr.3d. 2016 WL 299493*

Mesa Dunes Mobile Home Estates, LLC believed it had reached an agreement to obtain a survey of support of residents with the HOA of its mobilehome park, as required before a mobilehome park owner may subdivide the property to convert it from rental spaces to resident ownership.

The conversion application was deemed incomplete. Mesa Dunes appealed.

The Court affirmed, finding that the required "agreement" requires the HOA's informed consent. The HOA here "agreed" to a survey only in the sense that it did not object to the informal and inconsequential polling of residents that it understood Mesa Dunes to be proposing. It did not "agree" to a process it did not understand would have long term, legally binding consequences.

**ADOPTED RULE**

**Maine**

**Fees**

Effective 1/16/2016, this rule amends 02-041-10 Me. Code R. § 5(22) to reduce the license fees for a Manufactured Housing Community from $60 plus $6 per lot, to $50 plus $5 per lot.

## DEFAULT SERVICING

**CASE LAW**

**Repossession – Subsequent tortfeasor**

*CASE NAME:* *Daniel v. Morris*
*DATE:* *12/04/2015*
*CITATION:* *District Court of Appeal of Florida, Fifth District. --- So.3d ----. 2015 WL 7782828*

The appeals court found that a creditor's nondelegable duty was breached when the company it hired, through an employee of the company, entered the debtor's property on March 6, 2012, to repossess a vehicle resulting in physical injury to the debtor, and, therefore, the creditor was liable for all damages resulting from the actions of the company and its employee. However, here, the creditor had no fault and would have been permitted to seek indemnification against its agents. Because a previous repossession attempt stopped when the debtor refused consent to entry, there was no trespass action accruing before March 6, 2012, for Appellees to aggravate. The court held that the repossession company was not a subsequent tortfeasor of the creditor, and thus initial and subsequent tortfeasor doctrine did not apply to preclude claims against repossession company as a result of a settlement between the creditor and the debtor. Reversed and remanded.

**CASE LAW**

**FDCPA – Account number**

*CASE NAME:* *Dorman v. Computer Credit, Inc.*
*DATE:* *12/21/2015*
*CITATION:* *United States District Court, D. New Jersey. --- F.Supp.3d ----. 2015 WL 9412919*

The plaintiff's motion for summary judgment was granted where he alleged that a debt collector had violated FDCPA by disclosing an invoice or account number through a clear plastic window of the envelope containing a debt collection letter. The Court held that the creditor violated 15 U.S.C. § 1692f(8), which prohibits a debt collector from using "unfair or unconscionable means" to collect a debt, and includes the following, nonexclusive list of prohibitions: "using any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business."

**CASE LAW**

**FDCPA – Creditor exemption**

*CASE NAME:* *Pimental v. Wells Fargo Bank, N.A.*
*DATE:* *01/06/2016*
*CITATION:* *United States District Court, D. Rhode Island. Slip Copy. 2016 WL 70016*

The Court adopted the Report and Recommendation of the Magistrate Judge finding that Plaintiffs had sufficiently alleged that Wells Fargo qualified as a "debt collector" under the FDCPA. The Court agreed with the Magistrate that due to Wells Fargo's use of the name America's Servicing Company ("ASC"), Plaintiffs adequately pled that it fell within the definition of debt collector under the provision that includes a "creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a

third person is collecting or attempting to collect such debts." 15 U.S.C. § 1692a(6). Further, Plaintiffs plausibly alleged that, based on the letter, a hypothetical unsophisticated consumer would not know that ASC was affiliated with Wells Fargo.

**CASE LAW**

**FDCPA – Third-party communication**

*CASE NAME:* *Halberstam v. Global Credit and Collection Corp.*
*DATE:* *01/12/2016*
*CITATION:* *United States District Court, E.D. New York. Slip Copy. 2016 WL 154090*

The Court held that, under the FDCPA, a debt collector, whose telephone call to a debtor is answered by a third party, must refrain from leaving callback information and attempt the call at a later time, and may not leave his name and number for the debtor to return the call, without disclosing that he is a debt collector, because the undisclosed nature of the call may induce the debtor to contact a debt collector when he does not wish to do so.

**CASE LAW**

**Short sale – Deficiency**

*CASE NAME:* *Coker v. JPMorgan Chase Bank, N.A.*
*DATE:* *01/21/2016*
*CITATION:* *Supreme Court of California. --- P.3d ----. 197 Cal.Rptr.3d 131. 2016 WL 24090116*

The Court held that the fact that Coker waived her right to insist that Chase proceed via foreclosure does not mean that their short sale agreement destroyed the purchase money nature of the loan or that Chase became entitled to collect more than the value of its security. Once Chase realized and exhausted the full value of its security, Cal. Code of Civ. Proc. § 580b prevented Chase from seeking to obtain Coker's other assets. When a borrower waives her rights by agreeing to a short sale, § 580b remains a barrier to any deficiency judgment after the lender collects the full value of its security from the sale.

**ADOPTED RULE**

**Alabama**

**Auctioneers**

Effective 2/24/2016, this rule adopts Ala. Admin. Code r. 150-X-1 Appendix A to provide affidavits for the principal auctioneer and the owner of auction companies to ensure each party understands the requirements of their responsibilities in the operation of an auction company.

Both affidavits include: I understand that only a licensed Auctioneer may offer, negotiate, or attempt to negotiate a contract for the sale of any goods or property, including real property, by means of public auction on behalf of the Company. I understand that it is a violation of Alabama law if an Auctioneer fails to enter into a written contract with the owner or cosignee of any property to be sold at public auction containing the terms and conditions on which the Auctioneer received the property for sale.

**LEGISLATION**

**Illinois**

**Collection Agency**

**2015 IL S 1369**. Enacted 1/29/2016. Effective immediately.

This bill amends the Collection Agency Act.

The bill amends 225 Ill. Comp. Stat. 425/2 by adding the definition of "collection agency" as any person who, in the ordinary course of business, regularly, on behalf of himself or herself or others, engages in the collection of a debt.

The bill also defines "consumer debt" or "consumer credit" as money or property, or their equivalent, due or

owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction.

225 Ill. Comp. Stat. 425/9.1 (scheduled to be repealed on 1/1/2026), has been amended regarding communication with persons other than the debtor to add that, any collection agency communicating with any person other than the debtor for the purpose of acquiring location information about the debtor shall identify himself or herself, state that he or she is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his or her employer (adding, "only if expressly requested").

The bill provides that this section applies to a collection agency or debt buyer only when engaged in the collection of consumer debt.

The bill amends 225 Ill. Comp. Stat. 425/9.2, Communication in connection with debt collection (also scheduled to be repealed on 1/1/2026), to provide that the section applies to a collection agency or debt buyer only when engaged in the collection of consumer debt.

The bill amends 225 Ill. Comp. Stat. 425/9.3, Validation of debts (also scheduled to be repealed on 1/1/2026), to provide that the required notice sent to the debtor must include a disclosure that upon the debtor's written request within the 30-day period, the collection agency will provide the debtor with the name and address of the original creditor, if different from the current creditor (adding "upon the debtor's written request within the 30-day period").

This section also applies to a collection agency or debt buyer only when engaged in the collection of consumer debt.

Finally, the bill adds 225 Ill. Comp. Stat. 425/60, Liability; federal compliance, to provide that a collection agency or a debt buyer shall not be subject to civil liability for its failure to comply with Section 2, 9.1, 9.2, or 9.3 of the Act, as amended, if the collection agency or the debt buyer can demonstrate compliance with comparable provisions of the federal Fair Debt Collection Practices Act.

**REGULATOR FAQ**

**Massachusetts**

**Foreclosure – Right to cure**

Regarding The January 2016 Updates To The Right To Cure Notice.

A sunset provision governing the written notice of a right to cure a default under a residential mortgage loan (Right to Cure Notice) took effect on January 1, 2016.

Effective January 1, 2016, the right to cure a default of a required payment under a residential mortgage or note secured by a residential property was reduced from a period of 150 days to 90 days pursuant to Mass. Gen. Laws c. 244, § 35A.

## INSTALLATION

**CASE LAW**

**Restrictions**

*CASE NAME:* *Flippo v. Mann*
*DATE:* *01/16/2016*
*CITATION:* *Court of Appeal of Louisiana, Second Circuit. --- So.3d ----. 2016 WL 154936*

Plaintiffs filed a petition for mandatory injunctions alleging that Mann resided in a mobile home in violation of the Restrictions in place for the subdivision. The trial court denied Mann's exception of nonjoinder, noting that the mortgage holder had sufficient notice and that its absence would not impair or impede its ability to protect its interest and ordered Mann to remove the home from the Property within 30 days of the ruling.

The appeals court affirmed, finding that the Dwelling Size Restriction clearly stated that "[a]ll main structures shall

be constructed in the subdivision, and no main structures shall be moved to a lot therein." Mann's mobile home was moved onto the Property and was not constructed on the Property. The fact that the Property was not one of the lots specifically excepted from the Restrictions reinforced the intent of the Restrictions.

**ADOPTED RULE**
**Colorado**
**Sewer/Water hook ups**

Effective 2/14/2016, this rule amends 3 Colo. Code Regs. § 720-1.

The rule adds 2.5.2.4, IRC Section R202 Definitions, to add a new definition to read as follows:

Manufactured Housing Hookup-Sewer. That portion of drainage piping and fittings connecting a single point of drainage pipe discharge from the factory installed plumbing of a manufactured home to the sanitary sewer riser under the set home. (More than a single connection to the home drainage piping shall be considered "plumbing" as defined in Colo. Rev. Stat. § 12-58-102 and subject to all provisions of article 58 of Title 12).

The rule also adds 2.5.2.5, IRC Section R202 Definitions, to add a new definition to read as follows:

Manufactured Housing Hookup-Water. That portion of piping and fittings connecting a single point of water supply from the factory installed water supply pipe of a manufactured home to the potable water riser under the set home.

Also added is 7.1.1, Issuance, to provide that plumbing, fuel gas piping, or manufactured home hookup permits shall be issued in the name of the qualified applicant or registered contractor performing the work prior to the commencement of any work being undertaken.

The rule adds 7.1. 2 1.1, Qualified applicant, which provides that a qualified applicant able to purchase a permit for inspection of a manufactured home hook up shall be a "registered installer" of manufactured homes as defined by part 33 of article 32 of title 24 C.R.S., or the homeowner doing his/her own setup.

7.1.2, Permit Required, has also been added to provide that a permit and inspections shall be required for all plumbing system installations, fuel gas piping work , or manufactured home hookup as described in the Title 12, Article 58, C.R.S. and/or the Colorado Plumbing Code or Colorado Fuel Gas Code, either through the Board or the Local Authority Having Jurisdiction.

The rule amends 7.1.2.1, Issuance, to provide that plumbing, or fuel gas piping, or manufactured home hookup (adding, "or manufactured home hookup") permits shall be issued in the name of the qualified applicant or registered contractor performing the work prior to the commencement of any work being undertaken.

The rule adds 7.1.2.2, Qualified applicant, to provide that a qualified applicant able to purchase a permit for inspection of a manufactured home hook up shall be a "registered installer" of manufactured homes as defined by part 33 of Article 32 of Title 24 C.R.S.

**ADOPTED RULE**
**Colorado**
**Ground vapor retarder - Fees**

This rule amends 8 Colo. Code Regs. § 1302-7 to provide that, for the purposes of determining ground vapor retarder installation, Colorado is not an arid region and the retarder is required to be installed.

The amended rule also increases certain fees, i.e.:

Installer Registration (1-year): from $100.00 to $150.00;

Independent Inspector Registration (3-years): from $300.00 to $450.00;

Insignia Fees: from $40.00 to $60.00;

Rough or Final Installation Inspection Fees: from $175.00 to $200.00; and

Reinspection Fee for Red Tag Removal: from $175.00 to $200.00.

**ADOPTED RULE**

**Washington**

**Code requirements**

Effective 2/1/2016, this rule amends Wash. Admin. Code §§ 296-150M-0020 thru -0550 to:

Adopt the latest code requirements and industry standards for manufactured and mobile homes in the state of Washington;

Amend the rules for clarity, to improve safety and reflect current processes, for example:

Allow the department to handle consumer complaints regarding manufactured homes;

Process change for submittal of approved fire safety certificates to the county treasurer's office, as opposed to the department; and

Clarify that awnings and/or carports must be constructed without blocking egress doors or windows.

Update the rules for permits, insignias, plan review, and inspections;

Amend language for consistency with statutory requirements; and

Amend language for general housekeeping, grammatical and reference corrections, etc.

Regarding the alteration of manufactured homes, the rule provides that the person or contractor performing the work is responsible for purchasing the permit and abatement of corrections, if applicable.

The rule provides that carbon monoxide alarms are required to be installed in manufactured and mobile homes in accordance with RCW 19.27.530 adopted by the Washington state building council.

The rule also provides for the installation of gas lines on manufactured homes:

(a) Gas lines must be material approved for gas distribution in manufactured/mobile homes.

(b) Must have a report available showing that the gas line tests were completed successfully. Either of the following shall be acceptable:

(i) A "Gas Piping Test Affidavit" completed and witnessed by a Washington state registered mechanical contractor representative who shall prepare a report. The test shall meet the requirements of current HUD regulation 24 C.F.R. § 3280.705.

(ii) The test must be witnessed by an L&I inspector.

## LENDING

**CASE LAW**

**Title insurance – Fees**

*CASE NAME:* *S & M Homes, LLC v. Chicago Title Ins. Co.*
*DATE:* *05/01/2015*
*CITATION:* *United States Court of Appeals, Sixth Circuit. 623 F. App'x 722*

S & M Homes, a vendor of mobile homes, brought suit against Chicago Title, alleging that a separate $300 for a title search fee, in addition to $391.50 for a title insurance policy violated Tennessee law. The district court granted Chicago Title's motion for summary judgment and dismissed S & M Homes' motion to certify a class as moot.

The appeals court found that the Tennessee legislature authorized the Tennessee Commissioner of Insurance to

make reasonable rules and regulations for regulating title-insurance companies. In counties with more than 700,000 residents, the title insurer is required to file and charge "[a]n all inclusive rate, except for charges for abstracts of title," and must file a rate schedule that includes the separate rate for preparing an abstract of title.

Chicago Title's 2011 rate schedule set forth a $200 base charge for a residential "title search," subject to "additional charges for searches involving complex or time-consuming matters ... [or for] copies of lengthy restrictions or easements." The $300 title-search fee charged to S & M Homes was comprised of a $200 base charge, plus an additional $100 charge based on the volume of documents included in the search. Although Chicago Title called the report for which the separate $300 fee was charged a "title search," not an "abstract of title," it nonetheless fell within the Tennessee regulation's definition of "abstract of title." Affirmed.

**CASE LAW**

**Rescission – When effective**

*CASE NAME:* *Paatalo v. JPMorgan Chase Bank*
*DATE:* *11/12/2015*
*CITATION:* *United States District Court, D. Oregon. --- F.Supp.3d ----. 2015 WL 7015317*

The Court found that, pursuant to *Jesinoski v. Countrywide Home Loans*, —— U.S. ——, 135 S.Ct. 790, 190 L.Ed.2d 650 (2015), the rescission and voiding of the security interest under TILA are effective as a matter of law as of the date of the notice. After a mortgagee receives a notice of rescission, it had two options. It can begin the unwinding process by returning the borrower's down payment or earnest money and taking action to "reflect the termination of [the] security interest," pursuant to 15 U.S.C. § 1635(b). Those actions, in turn, would trigger the borrower's obligation to tender a payoff of the remaining loan amount. In the alternative, the mortgagee can file a lawsuit to dispute the borrower's right to rescind the loan. Here, plaintiff alleged the bank did neither of those things.

Further, there was no retroactivity issue here. When a court interprets a statute, it is not "retroactive" to apply the decision to transactions already entered into, because the court is determining what the law has always meant.

Because plaintiff adequately alleged (1) he had a conditional right to rescind in 2008; and (2) he exercised that right, he stated a claim for at least some of the relief he sought—a declaratory judgment deeming the foreclosure of the Deeds of Trust null and void.

**CASE LAW**

**TILA – Rescission**

*CASE NAME:* *Wigley v. American Equity Mortgage*
*DATE:* *11/17/2015*
*CITATION:* *United States District Court, W.D. Tennessee, Western Division. Slip Copy. 2015 WL 7292562*

The Court held that the three-year right of rescission does not extend to the failure to disclose an assignment. An assignment is not a material disclosure listed in TILA and therefore will not trigger the right to rescind as a remedy for violations of the disclosure requirement under 15 U.S.C. § 1641(g) and 12 C.F.R. § 226.39.

**CASE LAW**

**CLEC violation – Self correction**

*CASE NAME:* *Askew v. HRFC, LLC*
*DATE:* *11/11/2016*
*CITATION:* *United States Court of Appeals, Fourth Circuit. --- F.3d ----. 2016 WL 105355*

After the defendant discovered that the plaintiff was being charged interest on his car loan in excess of the Maryland Credit Grantor Closed End Credit Provisions (CLEC)'s maximum allowable rate, it notified plaintiff of

the mistake and that it was making adjustments accordingly. Askew sued, alleging violation of CLEC, breach of contract, and violation of Maryland Consumer Debt Collection Act (MCDCA). The district court granted the lender's motion for summary judgment.

The appeals court found that CLEC affords credit grantors the opportunity to avoid liability through self-correction and that HRFC had availed itself of that opportunity. The Court, therefore, affirmed the judgment of the district court with respect to Askew's CLEC and breach of contract claims. The Court, however, found that because a reasonable jury could find that HRFC's conduct in, according to Askew, making false statements to him violated the MCDCA, HRFC was not entitled to summary judgment as to this claim.

## CASE LAW

**Unconscionability – Unconscionable inducement**

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*CASE NAME:* *McFarland v. Wells Fargo Bank, N.A.*
*DATE:* *01/15/2016*
*CITATION:* *United States District Court, W.D. Tennessee, Western Division. Slip Copy. 2015 WL 7292562*

McFarland alleged that his mortgage agreement, providing him with a loan far in excess of his home's actual value, was an "unconscionable contract" under the West Virginia Consumer Credit and Protection Act (the "WVCCPA"). The district court rejected that claim, holding that a loan exceeding the worth of a home, without more, is not evidence of "substantive unconscionability" under West Virginia law. And because the district court understood a WVCCPA claim always to require a showing of substantive unconscionability, it did not consider the fairness of the process by which the agreement was reached.

The appeals court agreed with the district court that the amount of a mortgage loan, by itself, cannot show substantive unconscionability under West Virginia law, but found that the WVCCPA allows for claims of "unconscionable inducement" even when the substantive terms of a contract are not themselves unfair.

## ADOPTED RULE

**Florida**

**Title insurance - Inducements**

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Effective 2/9/16, this rule adopts Fla. Admin. Code Ann. r. 69B-186.010 to provide a list, intended as examples and not exhaustive, of activities that are unfair methods of competition and unfair or deceptive acts or practices prohibited by Fla. Stat. Ann. § 626.9521, related to title insurance.

The rule does not prohibit inducements or rebates provided by filed or approved rates or rating manuals, advertising gifts allowed by Fla. Stat. Ann. § 626.9541(1)(m), or inducements and rebates otherwise expressly allowed by law.

The term "referrer of settlement service business" means any person who is in a position to refer title insurance business incident to or part of a real estate transaction, or an associate of such person. A referrer of settlement service business may be a title insurance agent, title insurance agency, title insurance company, attorney, real estate broker, real estate agent, real estate licensee, broker associate, sales associate, mortgage banker, mortgage broker, lender, real estate developer, builder, property appraiser, surveyor, escrow agent, closing agent, or any other person or entity involved in a real estate transaction for which title insurance could be issued; or any employee, officer, director, or representative of such a person or entity.

The list includes:

(a) Facilitating any discount, reduction, credit, or paying any fee or portion of the cost of an inspection, inspection

report, appraisal, or survey, including wind inspection, to a purchaser or prospective purchaser of title insurance.

(b) Providing membership in any organization, society, association, guild, union, alliance or club at a discount, reduced rate, or at no cost to a referrer of settlement service business.

(c) Making or offering to make a charitable or other tax-deductible contribution on behalf of the purchaser or prospective purchaser of title insurance.

(d) Providing or offering stocks, bonds, securities, property, or any dividend or profit accruing or to accrue thereon to a referrer of settlement service business. However, the use of lawful affiliated business arrangements that are permitted under the Federal Real Estate Settlement Procedure Act would not violate this subparagraph and would be allowable under subsection (2) of this rule.

(e) Providing or offering employment to a referrer of settlement service business in exchange for the purchase of title insurance.

(f) Providing or paying for the printing of bulletins, flyers, post cards, labels, etc. that promote the business of a referrer of settlement service business.

(g) Furnishing or paying for the furnishing of office equipment (fax machines, telephones, copy machines, etc.) to a referrer of settlement service business.

(h) Providing or paying for cellular telephone contracts for a referrer of settlement service business.

(i) Providing simulated panoramic home and property tours to real estate brokers or real estate sales associates that they utilize to promote their listings.

(j) Providing or paying for gift cards or gift certificates to or for a referrer of settlement service business or to a purchaser or prospective purchaser of title insurance.

(k) Sponsoring and hosting, or paying for the sponsoring and hosting, of open houses for real estate brokers or real estate sales associates to promote their listings.

(l) Providing or paying for food, beverages, or room rentals at events designed to promote the business of a referrer of settlement service business other than the title insurance agent or agency.

(m) Paying advertising costs to advertise and promote the listings of real estate brokers or real estate sales associates via publications, signs, emails, websites, web pages, banners, or other forms of media.

(n) Providing an endorsement, designation of preferred status, approved status, or featured partner status on publications, signs, emails, websites, web pages, banners or other forms of media promoting the business of real estate brokers or real estate sales associates.

(o) Paying a referrer of settlement service business to fill out processing (order) forms in exchange for title insurance contracts.

(p) Providing "leads" or mailing lists to or on behalf of a referrer of settlement service business at no cost or a reduced cost.

(q) Entering into any arrangement to provide unearned compensation to a referrer of settlement service business.

(r) Providing, or offering to provide, non-title services, without a charge that is commensurate with the actual cost, to a referrer of settlement service business.

The rule excludes expenditures for:

(a) Promotional items with a company logo of the title insurance agent or agency, with a value not to exceed the amount allowed by paragraph 626.9541(1)(m), F.S., per item. "Promotional item" does not include a gift certificate, gift card, or other item that has a specific monetary value on its face, or that may be exchanged for any other item having a specific monetary value.

(b) Furnishing educational materials, such as fliers, brochures, pamphlets, or Frequently Asked Question sheets, exclusively related to title insurance for a referrer of settlement service business that are not conditioned

on the referral of business and that do not involve the defraying of expenses that otherwise would be incurred by a referrer of settlement service business.

(c) Compensation paid to a referrer of settlement service business for goods and services actually performed at amounts not exceeding the reasonable fair market value of the goods and services and that is not intended to induce the referral of title insurance business.

(d) Any advertising or marketing activities that directly promote the title insurance business of the title insurance agent or agency, which may include joint participation in marketing with another party provided that the agent or agency pays the proportionate share or fair market value of the costs, and does not violate paragraph (5)(a) of this rule.

(e) A payment by a title insurance company to its duly appointed agent for services actually performed in the issuance of a title insurance policy.

(f) A payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed.

**ADOPTED RULE**
**Georgia**
**Disclosures**

Effective 1/26/2016, this rule amends Ga. Comp. R. & Regs. 80-11-1-.01, Disclosure Requirements.

The amendment clarifies that the provisions of this rule only apply to entities that are licensed, registered, or required to be licensed or registered under the Georgia Residential Mortgage Act as it was never the intent of the Department to expand the scope of the rule beyond those entities. The revision also clarifies that disclosures required by federal law instead of the specific disclosures set forth in 12 C.F.R. §§ 1026.19, 1026.37, and 1026.38 shall be provided to applicants for a home equity line of credit, a residential mortgage loan not secured by real property, such as a mobile home, or a residential mortgage loan related to a reverse mortgage as it was never the intent of the Department to require any disclosures other than those disclosures required by federal law. Finally, the revision makes a number of other changes to increase the clarity of the rule.

The rule also amends Ga. Comp. R. & Regs. 80-11-3-.01, Administrative Fines.

The revision expands the factors the Department can consider in evaluating whether a fine should be waived or modified.

**COMPLIANCE BULLETIN**
**CFPB**
**Fair Credit Reporting Act**

The FCRA's Requirement That Furnishers Establish and Implement Reasonable Written Policies and Procedures Regarding the Accuracy and Integrity of Information Furnished to All Consumer Reporting Agencies. Issued 1/27/2016.

This document highlights existing obligations under the Fair Credit Reporting Act (FCRA) for furnishers of consumer information to consumer reporting agencies (CRAs) to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of information furnished to all CRAs.

**PRESS RELEASE**
**CFPB**
**Disparate impact**

Issued 2/2/2016.

The CFPB and Department of Justice resolved an action with Toyota Motor Credit Corporation, under which Toyota Motor Credit will change its pricing and compensation system to substantially reduce dealer

discretion and accompanying financial incentives to mark up interest rates. As part of the order, Toyota Motor Credit is also required to pay up to $21.9 million in restitution to thousands of African-American and Asian and Pacific Islander borrowers who paid higher interest rates than white borrowers for their auto loans, without regard to their creditworthiness, as a result of its past practices.

As an indirect auto lender, Toyota Motor Credit sets interest rates, or "buy rates," for consumers based on credit scores and other risk criteria. Those rates are conveyed to auto dealers. Indirect auto lenders like Toyota Motor Credit then allow auto dealers to charge a higher interest rate when they finalize the deal with the consumer. This is typically called "dealer markup." Markups can generate compensation for dealers while giving them the discretion to charge consumers different rates regardless of consumer creditworthiness. Over the time period under review, Toyota Motor Credit permitted dealers to mark up consumers' interest rates as much as 2.5 percent.

The investigation concluded that Toyota Motor Credit's policies resulted in minority borrowers paying higher dealer markups.

The investigation did not find that Toyota Motor Credit intentionally discriminated against its customers, but rather that its discretionary pricing and compensation policies resulted in discriminatory outcomes.

Under the CFPB order, Toyota Motor Credit must substantially reduce the amount by which loans can be marked up. Toyota Motor Credit will reduce dealer discretion to mark up the interest rate to only 1.25 percent above the buy rate for auto loans with terms of 5 years or less, and 1 percent for auto loans with longer terms. Toyota Motor Credit also has the option under the order to move to non-discretionary dealer compensation. The Bureau did not assess penalties against Toyota Motor Credit because of the proactive steps the company is taking that directly address fair lending risk by substantially reducing or eliminating discretionary pricing and compensation systems. Toyota Motor Credit has further committed that it will not fund any additional nondiscretionary component of dealer compensation by increasing its posted risk-based buy rates.

Toyota Motor Credit will also pay up to $21.9 million in remediation to affected consumers and pay to hire a settlement administrator to distribute funds to affected consumers.

## LICENSING

**REGULATOR FAQ**

**Nevada**

**Mortgage servicing**

Implementation of Mortgage Servicer Licensing Program and Frequently Asked Questions.

A person that services mortgage loans that is not currently licensed with the Division as a Mortgage Broker, Mortgage Banker, or Escrow Agency should go to the NMLS and submit an application for a Nevada Mortgage Servicer License.

A person that is currently licensed with the Division as a Mortgage Broker or Mortgage Banker and acts as a servicer in connection with mortgage loans that it did not make or arrange under its mortgage broker or mortgage banker license, should go to the NMLS and submit an application for a Nevada Supplemental Mortgage Servicer License.

A mortgage servicer is not required to have an office location in Nevada.

A mortgage servicer is defined by § 86.2 of AB 480 (2015) to include:

a. Any person, whether acting as the current owner of the promissory note or as the authorized agent of the current owner of a promissory note, who:

i. directly services a mortgage loan secured by real property located in Nevada; or

ii. is responsible for interacting with a borrower or managing a Nevada mortgage loan account on a daily basis (e.g., collecting and crediting periodic loan payment, managing any escrow account), or enforcing the note and security instrument.

b. A person providing the above services by contract as a subservicing agent to a master servicer by contract.

Unless a person services a loan secured by commercial property that was made or arranged by a mortgage broker under NRS 645B and funded by one or more private investors, a mortgage servicer license is not required under the Act to service loans secured by commercial property.

If a person only holds the servicing rights and does not engage in any activity described in § 86.2 of AB 480, a mortgage servicer license is not required.

**PROPOSED RULE**
**Texas**
**Installer licensing**

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (the "Department") proposes to amend 10 Texas Administrative Code, Chapter 80, §§ 80.3, 80.30, 80.32, 80.36, 80.41, 80.71, 80.73 and 80.90 relating to the regulation of the manufactured housing program. The rules are revised for clarification purposes.

Section 80.3(f): Revised to clarify the installer is also eligible to request an industry inspection per §1201.355(b) of the Standards Act.

Sections 80.30(f) and 80.30(g): Revised to clarify the rule regarding disclosures in advertisements also relates to any advertisements in social media.

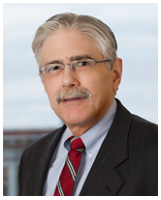
Section 80.32(u): The new subsection clarifies that a person may exercise their right of rescission of contract for sale, exchange, or lease-purchase of home within three (3) business days without penalty or charge.

Section 80.41(f)(1): The revision will assist in preventing former license holders whose license was revoked, suspended, and/or denied from applying for a salesperson's license when they may be viewed as unsuitable to work in the manufactured housing industry.

Section 80.73(e): Clarifies the timeframe in which the Department requires the licensee to submit the completed service or work orders.

Section 80.73(f): Revised to remind license holders of the risk of requesting an extension without sufficient basis well in advance in case the request is denied.

Section 80.90(a)(6): Revised to include personal property in the designation for use as a dwelling that requires evidence of a satisfactory habitability inspection by the Department.



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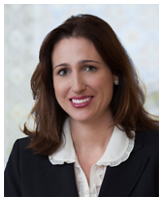

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