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!

Well, March Madness is over. We hope your team and brackets did not disappoint. Congratulations to all of the Villanova fans out there. With luck, you were jumping up and down with Sir Charles Monday night.

The loss to S.F. Austin is not the only worrisome thing coming out of West Virginia in March. A federal district court determined that speed pay fees could violate the West Virginia Consumer Credit & Protection Act. Don't fret Mountaineers because we have good news from the month of March. The CCPA was also amended to expressly allow certain default charges.

Other good news in March included the US Supreme Court upholding a decision from the 8th Circuit Court of Appeals that spousal guarantors could not sue enforce the ECOA (note, however, it was an equally divided court). In addition, the 4th Circuit Court of Appeals held that an entity purchasing defaulted debt was not a debt collector under the FDCPA. Now there is something to jump up and down over!

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HUD also issued guidance on disparate impact from criminal records. If you are a community operator, you will want to pay close attention to this guidance.

Read on!

COMMUNITIES

CASE LAW

Fair Housing – Reasonable accommodation

CASE NAME: *Dempsey v. Housing Operations Management, Inc.*
DATE: *02/23/2016*
CITATION: *United States District Court, D. Connecticut. Slip Copy. 2016 WL 730702*

Dempsey alleged that his alcoholism was a qualifying disability and that the defendant was aware of it, and for purposes of the motion to dismiss, defendant disputed neither of those allegations. Defendant argued, however, that overlooking nonpayment of rent is not a "reasonable accommodation" that may be necessary to afford Dempsey an "equal opportunity" as a renter; and that far from refusing to make a reasonable accommodation, defendant actually endeavored to resolve its dispute with a stipulated judgment that would have allowed Dempsey to remain in his residence if he kept to a schedule of payments, which he failed to do.

The Court found that the Fair Housing Act requires housing providers to make reasonable accommodations for renters' disabilities, but it does not undermine the nature of their transaction or so fundamentally alter their relationship that it removes eviction as a remedy for nonpayment of rent. Defendant's motion to dismiss granted.

CASE LAW

Fair Housing – Reasonable accommodation

CASE NAME: *Stein v. Creekside Seniors, L.P.*
DATE: *03/04/2016*
CITATION: *United States District Court, D. Idaho. Slip Copy. 2016 WL 912176*

The Steins alleged several Fair Housing Act (FHA) and Rehabilitation Act (RA) violations, challenging Creekside's alleged failure to make reasonable accommodations on account of Mr. Stein's disability. The Steins further asserted several retaliation claims under both the FHA and RA against Creekside. The Steins also alleged the design of their dwelling is in violation of the FHA because it does not have a "secondary exit." Both parties filed summary judgment motions.

The Steins initially filed their complaint with HUD, but HUD dismissed the complaint.

Here, the Court found that, with regard to reasonableness, assuming arguendo that Mr. Stein's general request for Creekside to enforce its no-smoking policy was reasonable, Mr. Stein was not entitled to the accommodation of his choosing. Creekside established a designated smoking area which effectively met Mr. Stein's disability needs to limit his exposure to second hand smoke.

The Court also found that by Mr. Stein's own admission, his request for a written parking space agreement was not motivated by any disability-related need and, therefore, his request was unreasonable under the FHA.

Further, even assuming the reinforcements in Steins' shower/tub wall were not compliant with HUD Guidelines, no genuine issue of material fact existed to rebut Creekside's argument that the shower grab bar is "reasonably accessible and usable for most physically disabled people."

Nor did the Court find any genuine issue of fact upon which a reasonable jury could conclude that Creekside retaliated against Mr. Stein.

Finally, the Court found that nowhere in the FHA does it require a covered unit to have a second exit.

Defendant's motion for summary judgment granted.

CASE LAW

Park expansion – Zoning

CASE NAME: *Big Bear Management Fund v. Lower Macungie Tp.*
DATE: *03/10/2016*
CITATION: *Commonwealth Court of Pennsylvania. Not Reported in A.3d. 2016 WL 917294*

Developer sought approval from Township of its Plan that would add 29 mobile homes to its existing mobile home park. Township determined that the Plan would require certain improvements.

Developer filed a Complaint in Mandamus seeking to require Township to alter and execute three pending agreements related to Developer's land development plan because the Agreements as written were contrary to or were not authorized by the Pennsylvania Municipalities Planning Code 1 (MPC).

The Court of Common Pleas granted the Motion for Judgment on the Pleadings filed by Township. Developer appealed.

The Court found that Developer had not proven that a township is without discretion to negotiate land development agreements that impose conditions on the approval of a land development plan to the extent that the execution of such agreements would be a ministerial or mandatory act subject to mandamus.

Moreover, in requiring Developer to execute the Agreements, Township was placing conditions on its approval of the Plan, which it is authorized to do.

Under the MPC, "if the applicant does not accept the proposed conditions, then the conditional approval is deemed a rejection. If the applicant objects to the conditions, an aggrieved party may appeal the matter to the trial court for a determination of whether the objected-to conditions are legal."

According to the Court, Mandamus is not a substitute for a statutory remedy that provides the means to review a public official's action and correct error. Even if Township's decision was wrong, it was made in good faith and in the exercise of legitimate jurisdiction and, therefore, mandamus cannot be used to review or compel the undoing of that action.

Affirmed.

CASE LAW

Leases – Class action

CASE NAME: *Schermer v. Tatum*
DATE: *03/18/2016*
CITATION: *Court of Appeal, Fourth District, Division 1, California. --- Cal.Rptr.3d ----. 2016 WL 1068616*

Plaintiffs brought a class action on behalf of residents who live in 18 mobilehome parks. Plaintiffs alleged they were subjected to uniform unconscionable lease agreements and leasing practices by defendants. Plaintiffs alleged among others causes of action (1) unfair business practices; (2) breach of the covenant of quiet enjoyment; (3) breach of duty of good faith and fair dealing; and (4) fraud and deceit.

The trial court sustained the owner-operators' demurrer to the class action allegations without leave to amend, finding there was no reasonable possibility plaintiffs could satisfy the community of interest requirement for class certification. Residents appealed.

The appeals court found that individual issues predominated, inasmuch as: (i) the policies and/or procedures at issue primarily arose out of one-on-one interactions between different defendants (and/or their agents) and each plaintiff and putative class member in each of the 18 mobilehome parks; (ii) these one-on-one interactions allegedly involved improper or unlawful conduct of defendants throughout the negotiation, execution, and enforcement of each lease agreement;

(iii) the unconscionable policies and procedures alleged involved at least eight different leasing practices defendants purportedly used to "trap" plaintiffs and the putative class members in connection with the negotiation, execution, and enforcement of each lease agreement; and (iv) several of the eight different leasing practices allegedly used by defendants involved facts particular to the individual negotiation of the lease agreement.

What's more there were substantial and numerous factually unique questions to be resolved in determining plaintiffs' and the putative class members' right to recovery, if any, and any disgorgement would not only be unique as to each plaintiff and putative class member, but also as to each park.

Affirmed.

LEGISLATION

Indiana

Abandoned homes

2016 IN H 1087. Enacted 3/24/2016. Effective immediately.

This bill adds Ind. Code § 9-22-1.7, Abandoned Manufactured Homes in Mobile Home Communities.

The new chapter provides that a landowner who finds a manufactured home that the landowner believes to be abandoned on property the landowner owns or controls, including:

(1) a mobile home community (as defined in IC 16-41-27-5); or

(2) rental property;

may sell or salvage the manufactured home if the manufactured home has been left without permission on the landowner's property for at least thirty (30) days. The thirty (30) day period begins on the day the landowner sends notice under section 4 of this chapter to the manufactured home owner.

A landowner shall send notice of a manufactured home described above as follows:

(1) To the manufactured home owner at the last known address of the manufactured home owner as shown by the records of the bureau. However, if the landowner is unable to determine the address of the manufactured home owner, the landowner may serve the manufactured home owner by posting notice on the manufactured home.

(2) To:

(A) a lienholder with a perfected security interest in the manufactured home; or

(B) any other person known to claim an interest in the manufactured home;

as shown by the records of the bureau.

Notice under this section must include a description of the manufactured home and a conspicuous statement that the manufactured home is on the landowner's property without the landowner's permission. If the manufactured home owner changes the manufactured home owner's address from that maintained in the records of the bureau, the manufactured home owner shall immediately notify the landowner of the new address.

All liens and security interests of any person or entity, other than the county treasurer, that fails to appear or otherwise participate in the auction under this chapter are waived and are void as of the date of the sale of the manufactured home at the auction.

LEGISLATION
Oregon
Rent increase – Smoking

2016 OR H 4143. Enacted 3/15/2016. Effective immediately.

This bill adds a new section to Chapter 90, Or. Rev. Stat. to provide that if a tenancy is a week-to-week tenancy, the landlord may not increase the rent without giving the tenant written notice at least seven days prior to the effective date of the rent increase.

If a tenancy is a month-to-month tenancy, the landlord may not increase the rent:

(a) During the first year after the tenancy begins.

(b) At any time after the first year of the tenancy without giving the tenant written notice at least 90 days prior to the effective date of the rent increase.

The notices required under this section must specify:

(a) The amount of the rent increase;

(b) The amount of the new rent; and

(c) The date on which the increase becomes effective.

The above does not apply to manufactured home lots.

The bill amends Or. Rev. Stat. § 90.220 to delete the provision that rent may not be increased without a 30-day written notice thereof in the case of a month-to-month tenancy or a seven-day written notice thereof in the case of a week-to-week tenancy. Refers, instead to the new section, above.

Or. Rev. Stat. § 90.302 has been amended to provide that, for smoking in a clearly designated nonsmoking unit or area of the premises, the fee for a second or any subsequent noncompliance may not exceed $250. A landlord may not assess this fee before 24 hours after the required warning notice to the tenant.

The bill also amends Or. Rev. Stat. § 90.460 to define "building" as a dwelling unit or a structure containing a dwelling unit.

LEGISLATION
Virginia
Termination

2016 VA H 1209, enacted 3/11/2016 and **2016 VA S 377**, enacted 3/23/2016. Effective 7/1/2016.

These bills amend Va. Code Ann. §§ 55-225.12 and 55-248.27 to authorize a court to terminate a rental agreement upon the request of the tenant or ordering the premises surrendered to the landlord if the landlord prevails on a request for possession pursuant to an unlawful detainer action properly filed with the court.

LEGISLATION
Virginia
Non-conforming use

2016 VA H 367. Enacted 3/29/2016. Effective 7/1/2016.

This bill amends Va. Code Ann. § 15.2-2307 to provide that if a use does not conform to the zoning prescribed for the district in which such use is situated, and if (i) a business license was issued by the locality for such use and (ii) the holder of such business license has operated continuously in the same location for at least 15 years and has paid all local taxes related to such use, the locality shall permit the holder of such business license to apply for a rezoning or a special use permit without charge by the locality or any agency affiliated with the locality for fees associated with such filing.

LEGISLATION

Washington

Tenant screening

2015 WA S 6413. Enacted 3/29/2016. Effective 6/8/2016.

This bill amends Wash. Rev. Code § 59.18.030 to add definitions for: "Comprehensive reusable tenant screening report"; "Criminal history"; and "Eviction history".

The bill amends Wash. Rev. Code § 59.18.257 to provide that, prior to obtaining any information about a prospective tenant, the prospective landlord shall first notify the prospective tenant in writing, or by posting, of whether or not the landlord will accept a comprehensive reusable tenant screening report made available to the landlord by a consumer reporting agency. If the landlord indicates its willingness to accept a comprehensive reusable tenant screening report, the landlord may access the landlord's own tenant screening report regarding a prospective tenant as long as the prospective tenant is not charged for the landlord's own tenant screening report.

The bill adds the provision that any landlord who maintains a web site advertising the rental of a dwelling unit or as a source of information for current or prospective tenants must include a statement on the property's home page stating whether or not the landlord will accept a comprehensive reusable tenant screening report made available to the landlord by a consumer reporting agency. If the landlord indicates its willingness to accept a comprehensive reusable tenant screening report, the landlord may access the landlord's own tenant screening report regarding a prospective tenant as long as the prospective tenant is not charged for the landlord's own tenant screening report.

The bill enacts a new section added to chapter 59.18 to provide:

(1) A court may order an unlawful detainer action to be of limited dissemination for one or more persons if: (a) The court finds that the plaintiff's case was sufficiently without basis in fact or law; (b) the tenancy was reinstated under RCW 59.18.410 or other law; or (c) other good cause exists for limiting dissemination of the unlawful detainer action.

(2) An order to limit dissemination of an unlawful detainer action must be in writing.

(3) When an order for limited dissemination of an unlawful detainer action has been entered with respect to a person, a tenant screening service provider must not: (a) Disclose the existence of that unlawful detainer action in a tenant screening report pertaining to the person for whom dissemination has been limited, or (b) use the unlawful detainer action as a factor in determining any score or recommendation to be included in a tenant screening report pertaining to the person for whom dissemination has been limited.

The bill amends Wash. Rev. Code § 59.18.280 to provide that within twenty-one (formerly, fourteen) days after the termination of the rental agreement and vacation of the premises or, if the tenant abandons the premises as defined in RCW 59.18.310, within twenty-one (formerly, fourteen) days after the landlord learns of the abandonment, the landlord shall give a full and specific statement of the basis for retaining any of the deposit together with the payment of any refund due the tenant under the terms and conditions of the rental agreement.

The landlord complies with this section if the required statement or payment, or both, are delivered to the tenant personally or deposited in the United States mail properly addressed to the tenant's last known address with first-class postage prepaid within the twenty-one (formerly, fourteen) days (adds the provision re: personal delivery).

REGULATOR BULLETIN
HUD
Criminal records – Disparate impact

Issued 4/4/2016.

Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions.

This guidance addresses how the discriminatory effects and disparate treatment methods of proof apply in Fair Housing Act cases in which a housing provider justifies an adverse housing action – such as a refusal to rent or renew a lease – based on an individual's criminal history.

Across the United States, African Americans and Hispanics are arrested, convicted and incarcerated at rates disproportionate to their share of the general population. Consequently, criminal records-based barriers to housing are likely to have a disproportionate impact on minority home seekers. While having a criminal record is not a protected characteristic under the Fair Housing Act, criminal history-based restrictions on housing opportunities violate the Act if, without justification, their burden falls more often on renters or other housing market participants of one race or national origin over another (i.e., discriminatory effects liability). Additionally, intentional discrimination in violation of the Act occurs if a housing provider treats individuals with comparable criminal history differently because of their race, national origin or other protected characteristic (i.e., disparate treatment liability).

In the first step of an analysis, a plaintiff (or HUD in an administrative adjudication) must prove that the criminal history policy results in a disparate impact on a group of persons because of their race or national origin.

A housing provider may offer evidence to refute the claim that its policy or practice causes a disparate impact on one or more protected classes.

In the second step of the discriminatory effects analysis, the burden shifts to the housing provider to prove that the housing provider has a substantial, legitimate, nondiscriminatory interest supporting the challenged policy and that the challenged policy actually achieves that interest.

Ensuring resident safety and protecting property are often considered to be among the fundamental responsibilities of a housing provider, and courts may consider such interests to be both substantial and legitimate. A housing provider must, however, be able to prove that its policy or practice of making housing decisions based on criminal history actually assists in protecting resident safety and/or property.

A housing provider with a policy or practice of excluding individuals because of one or more prior arrests (without any conviction) cannot satisfy its burden of showing that such policy or practice is necessary to achieve a substantial, legitimate, nondiscriminatory interest.

In most instances, a record of conviction (as opposed to an arrest) will serve as sufficient evidence to prove that an individual engaged in criminal conduct. But a housing provider must show that its policy accurately distinguishes between criminal conduct that indicates a demonstrable risk to resident safety and/or property and criminal conduct that does not.

Similarly, a policy or practice that does not consider the amount of time that has passed since the criminal conduct occurred is unlikely to satisfy this standard,

In the third step, the burden shifts back to the plaintiff or HUD to prove that a substantial, legitimate, nondiscriminatory interest could be served by another practice that has a less discriminatory effect.

Individualized assessment of relevant mitigating information beyond that contained in an individual's criminal record is likely to have a less discriminatory effect than categorical exclusions. Relevant individualized evidence might include: the facts or circumstances surrounding the criminal conduct; the age of the individual at the time of the conduct; evidence that the individual has maintained a good tenant history before and/or after the conviction or conduct; and evidence of rehabilitation efforts. By delaying consideration of criminal history until after an individual's financial and other qualifications are verified, a housing provider may be able to minimize any additional costs that such individualized assessment might add to the applicant screening process.

Section 807(b)(4) of the Fair Housing Act provides that the Act does not prohibit "conduct against a person because such person has been convicted … of the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)." Accordingly, a housing provider will not be liable under the Act for excluding individuals because they have been convicted of one or more of the specified drug crimes, regardless of any discriminatory effect that may result from such a policy.

A housing provider may also violate the Fair Housing Act if the housing provider's use of criminal records or other criminal history information is a pretext for unequal treatment of individuals because of race, national origin or other protected characteristics.

Discrimination may also occur before an individual applies for housing. For example, intentional discrimination may be proven based on evidence that, when responding to inquiries from prospective applicants, a property manager told an African American individual that her criminal record would disqualify her from renting an apartment, but did not similarly discourage a White individual with a comparable criminal record from applying.

DEFAULT SERVICING

CASE LAW

Bankruptcy – Value of collateral

CASE NAME: *In re Eaddy*
DATE: *02/23/2016*
CITATION: *United States Bankruptcy Court, D. South Carolina. Slip Copy. 2016 WL 745277*

Debtor filed chapter 13 and scheduled her mobile home as personal property valued at $16,281.97. She scheduled a $66,598 debt owed to 21st Mortgage secured by the mobile home. 21st Mortgage filed a proof of claim for $69,981.76 and filed an objection to Debtor's plan, contending that the value of the mobile home was $38,500.

The Court found that the security agreement identified specific collateral, and the space where other collateral can be listed was blank. Accordingly, the Court concluded that 21st Mortgage's security interest did not attach to any non-accession goods, including the kitchen appliances, air conditioner, drapes and curtains, or smoke detectors. The Court found it logical to conclude that the porch, storm windows, metal skirting outside the mobile home, heating appliances, carpeting, fireplace, built-in dishwasher, and bathroom fixtures were accessions. Generally, none of these items have utility or value outside the home in which they are installed.

Having determined the extent of the lien, the Court considered the value of the collateral securing the lien. The Court found that Debtor's expert's comparable properties had deficiencies that made them not comparable to Debtor's property. None were actually comparable because they included the land on which the homes were located.

The Court, instead, agreed with 21st Mortgage's expert that here the NADA value was an appropriate starting

point for value, with some adjustments. The Court refused to include the value for moving collateral, which should not be added or subtracted when the property is not being relocated.

The Court further discounted the valuation for a home warranty or related retailer services that would come from a purchase.

The Court held that the mobile home was valued at $29,595. Since the plan did not use this value, confirmation was denied.

CASE LAW

Fees – Speed pay

CASE NAME: *Muhammad v. PNC Bank, N.A.*
DATE: *02/29/2016*
CITATION: *United States District Court, S.D. West Virginia, Charleston Division. Slip Copy. 2016 WL 815289*

The plaintiff had a home-secured loan with the defendant. Although neither the plaintiff's Note nor Deed of Trust provided for the assessment of speed pay fees or document request fees, the defendant charged the plaintiff numerous speed pay fees and several document fees. Further, neither fee reflected the actual cost of the service. The assessment of these fees, according to the plaintiff, violated the West Virginia Consumer Credit & Protection Act.

The Court found that the speed pay fees were processing or transaction fees associated with the primary obligation and were paid to expedite the crediting of payments on the principal obligation. The plaintiff was charged these fees in connection with his loan. These facts were enough to allege the speed pay fees were incidental to the loan. As a result, these facts were enough to state a claim for violations of W.Va. Code § 46A-2-128(d).

Accordingly, the Court denied defendant's motion.

CASE LAW

TILA – Assignee liability

CASE NAME: *Evanto v. Federal Nat. Mortg. Ass'n*
DATE: *03/01/2016*
CITATION: *United States Court of Appeals, Eleventh Circuit. --- F.3d ---. 2016 WL 788120*

Evanto's home mortgage was voluntarily assigned to the Federal National Mortgage Association, or Fannie Mae, and Green Tree Servicing LLC serviced the mortgage. After foreclosure proceedings began, Evanto requested a payoff balance from Green Tree. The Truth in Lending Act obligated Green Tree to provide the balance within seven business days, but Evanto alleged that Green Tree never provided it.

Evanto sued Fannie Mae for Green Tree's failure to timely provide the balance. Fannie Mae moved to dismiss, and the district court granted the motion. Evanto appealed.

The Court found that TILA creates a cause of action against an assignee for a violation that is "apparent on the face of the disclosure statement provided in connection with [a mortgage] transaction pursuant to this subchapter." 15 U.S.C. § 1641(e)(1)(A). Because the failure to provide a payoff balance was not a violation apparent on the face of the disclosure statement, the Court affirmed the dismissal of Evanto's complaint.

CASE LAW

Foreclosure – Standing

CASE NAME: *Deutsche Bank Nat. Trust Co. v. Johnston*
DATE: *03/03/2016*
CITATION: *Supreme Court of New Mexico. --- P.3d ---. 2016 WL 852521*

Deutsche Bank National Trust Company, acting as trustee for Morgan Stanley ABS Capital 1 Inc. Trust 2006–NC4 (Deutsche Bank), filed a complaint seeking foreclosure on

the home of Johnston (Homeowner) and attached to its complaint an unindorsed note, mortgage, and land recording, both naming a third party as the mortgagee. Deutsche Bank later provided documentation and testimony showing that (1) a document assigning the mortgage to Deutsche Bank was dated prior to the filing of the complaint but recorded after the complaint was filed; (2) Deutsche Bank possessed a version of the note indorsed in blank at the time of trial; and (3) a servicing company began servicing the loan on behalf of Deutsche Bank prior to the filing of the complaint. After receiving this evidence, the district court found that Deutsche Bank had standing to foreclose on Homeowner's property. The Court of Appeals disagreed, opining that "standing is a jurisdictional prerequisite for a cause of action," and concluded that the evidence provided by Deutsche Bank did not establish its standing as of the time it filed its complaint. Deutsche Bank appealed.

Although the Court held that standing was not a jurisdictional prerequisite in this case, the Court nonetheless affirmed the Court of Appeals' ultimate conclusion that the evidence provided by Deutsche Bank did not establish standing.

CASE LAW

FDCPA – "Hello" letter

CASE NAME: *O'Connell v. Bayview Loan Servicing, LLC*
DATE: *03/17/2016*
CITATION: *United States District Court, E.D. Wisconsin. Slip Copy. 2016 WL 1069079*

O'Connell defaulted on a mortgage loan and the holder of that loan foreclosed upon the property. The mortgagee waived any deficiency judgment and the redemption period expired on October 27, 2015. On that day, Bayview took over servicing the loan. Bayview mailed O'Connell certain documents that O'Connell contends were communications in connection with the collection of a debt but failed to timely provide him with a written notice stating the amount of the debt, the name of the creditor, that he had 30 days to dispute the debt, his right to demand verification of the debt, and the right to learn the identity of the original creditor, as required by the FDCPA.

Bayview moved to dismiss, contending that there was not an "initial communication with a consumer in connection with the collection of any debt." Rather, it was a "hello letter" sent to comply with the servicing transfer notification requirements of RESPA.

According to the Court, three factors are relevant to determining if the correspondence was sent in connection with the collection of a debt: (1) whether the communication demanded payment; (2) the nature of the parties' relationship; and (3) the objective purpose and context of the communication. The Court noted that the fact that the letter closed with the disclaimer, "This letter is an attempt to collect a debt," did not automatically mean that it was a communication in connection with the collection of any debt under 15 U.S.C. § 1692g.

Although the letter from Bayview provided details as to how to make a payment, it did not demand payment or indicate the amount of any such payment or the balance of a loan. The letter indicated merely to whom payments may be sent, with no reference to the status of the account or any "mention of default, delinquency, or foreclosure."

Further, the relationship between the parties was that of mortgagor and loan servicer. RESPA makes no distinction between loans in good standing, defaulted loans, or uncollectable loans; the RESPA change in servicer notifications are required regardless.

Finally, the objective purpose of the letter was introductory and informative and related to ordinary loan servicing matters.

Motion to dismiss granted.

CASE LAW

Debt buyers – Preemption

CASE NAME: *Midland Funding, LLC v. Madden*
DATE: *03/21/2016*
CITATION: *Supreme Court of the United States. --- S.Ct. ---. 2016 WL 1078922*

The Court invited the Solicitor General to file a brief in this case expressing the views of the United States.

As reported in the May 2015 McGlinchey Stafford Manufactured Housing Finance Law Update, in *Madden v Midland Funding, LLC*, 786 F.3d 246 (2d Cir. 2015), the appeals court found that third-party debt buyers are distinct from agents or subsidiaries of a national bank, and NBA preemption did not apply, where Midland Funding acted solely on its own behalf, as the owner of the debt.

CASE LAW

Repossession – Police involvement

CASE NAME: *Goard v. Crown Auto, Inc.*
DATE: *03/21/2016*
CITATION: *United States District Court, W.D. Virginia, Lynchburg Division. --- F.Supp.3d ----. 2016 WL 1091144*

Midnight Express, was unsuccessful in repossessing Goard's vehicle due to Goard's objection. Police officers, including Jonathan Howard, Joseph McKinley, Edward Cook and Ryan Ball, arrived at the scene. The officers declared that Goard should turn over her Honda Accord. Goard contended that she was told by the officers that if she did not turn over the vehicle, she would be arrested. As a result, Goard relinquished possession of her vehicle to Midnight Express.

Goard sued, alleging that the police officer assisted, encouraged, facilitated, and caused the unlawful repossession of her vehicle in violation of 42 U.S.C. § 1983. Defendants asserted that qualified immunity shielded them from liability.

The Court found that when an on-duty police officer actively participates in a creditor's repossession, the officers are participating in the removal of the debtor's property while cloaked in the mantle of their authority as agents of the state.

The Court further found that Goard's complaint also alleged that the officers deprived her of federal rights protected by the Fourth and Fourteenth Amendments which protect against "meaningful interference with an individual's possessory interest in that property."

Therefore, the Court held that Goard's complaint stated a plausible claim upon which relief could be granted unless qualified immunity protected the Defendants' actions.

To be entitled to qualified immunity, a defendant must show either that [1] his conduct did not violate the plaintiff's constitutional rights, or that even if there was a constitutional violation, [2] the right in question was not clearly established at the time that the defendant acted.

According to the Court, the right to due process prior to the seizure of one's property is subject to Fourth and Fourteenth Amendment scrutiny. In addition, courts have also routinely denied qualified immunity in officer-assisted repossession. Therefore, Goard's complaint contained sufficient allegations of constitutional violations to satisfy the first prong of the qualified immunity inquiry.

As for the second prong, the Court found that the combination of case law from the United States Supreme Court and the Virginia Code provided sufficient basis to find this violation "clearly established."

Defendants' motion to dismiss denied.

CASE LAW

FDCPA – Current balance

CASE NAME: *Avila v. Riexinger & Associates, LLC*
DATE: *03/22/2016*
CITATION: *United States Court of Appeals, Second Circuit. --- F.3d ---. 2016 WL 1104776*

Plaintiffs received collection notices from defendant. The notices stated each plaintiff's "current balance" but did not disclose that this balance was continuing to accrue interest or that, if plaintiffs failed to pay the debt within a certain amount of time, they would be charged a late fee.

Plaintiffs sued, alleging that the collection notices violated the FDCPA, claiming that they did not disclose that the balance might increase due to interest and fees.

Defendants moved to dismiss and the district court granted the motion. The court recognized that district courts are divided on the question and sided with those courts that have held that no disclosures about interest or fees are required. Plaintiffs appealed.

Because the statement of an amount due, without notice that the amount is already increasing due to accruing interest or other charges, can mislead the least sophisticated consumer into believing that payment of the amount stated will clear her account, the Court held that the FDCPA requires debt collectors, when they notify consumers of their account balance, to disclose that the balance may increase due to interest and fees.

The Court further held that a debt collector will not be subject to liability under Section 1692e for failing to disclose that the consumer's balance may increase due to interest and fees if the collection notice either accurately informs the consumer that the amount of the debt stated in the letter will increase over time, or clearly states that the holder of the debt will accept payment of the amount set forth in full satisfaction of the debt if payment is made by a specified date.

The Court vacated the judgment of the district court insofar as it dismissed plaintiffs' claim that defendants violated the FDCPA by sending plaintiffs a collection notice stating their "current balance" without disclosing that the balance might increase over time due to interest and fees.

CASE LAW

FDCPA – Debt buyer

CASE NAME: *Henson v. Santander Consumer USA, Inc.*
DATE: *03/23/2016*
CITATION: *United States Court of Appeals, Fourth Circuit. --- F.3d ---. 2016 WL 1128419*

Four Maryland consumers commenced this action, alleging that the defendants violated the FDCPA by engaging in prohibited collection practices when collecting on the plaintiffs' automobile loans. The loans were originally made by CitiFinancial Auto. After CitiFinancial Auto foreclosed on the loans, leaving the plaintiffs obligated to pay deficiencies, CitiFinancial sold the defaulted loans to Santander and Santander thereafter attempted to collect on the loans it had purchased.

The district court granted Santander's motion to dismiss on the ground that the complaint did not allege facts showing that Santander qualified as a "debt collector" subject to the FDCPA.

The plaintiffs appealed, presenting the single issue of whether their complaint adequately alleged that Santander was acting as a "debt collector," as that term is defined in 15 U.S.C. § 1692a(6), when it engaged in the collection practices challenged in the suit.

The Court concluded that the default status of a debt has no bearing on whether a person qualifies as a debt collector. That determination is ordinarily based on whether a person collects debt on behalf of others or for its own account, the main exception being when the "principal purpose" of the person's business is to collect

debt. With limited exceptions, a debt collector thus collects debt on behalf of a creditor. A creditor, on the other hand, is a person to whom the debt is owed, and when a creditor collects its debt for its own account, it is not generally acting as a debt collector.

The complaint here did not allege that Santander's principal business was to collect debt, alleging instead that Santander was a consumer finance company. Nor did the plaintiffs contend that Santander was using a name other than its own in collecting the debts. Thus, to allege that Santander was a debt collector, the complaint was required to show that Santander regularly collects debts owed to others and was doing so here.

But the complaint asserted that after Santander purchased the plaintiffs' debts (and became the entity to which the debts were owed), it engaged in collection efforts that violated the FDCPA. Thus, those collection efforts were pursued for its own account, as the loans were then owed to it. Santander was therefore not a person collecting a debt on behalf of another, so as to qualify as a debt collector, but on behalf of itself, making it a creditor.

CASE LAW

FDCPA – Communication with debtor's attorney

CASE NAME: *Bishop v. Ross Earle & Bonan, P.A.*
DATE: *03/25/2016*
CITATION: *United States Court of Appeals, Eleventh Circuit. --- F.3d ---. 2016 WL 1169064*

The defendants sent a debt-collection letter to the attorney of Connie Bishop which neglected to inform Bishop that she must dispute the debt "in writing."

Bishop filed a complaint alleging that the letter violated § 1692g of the FDCPA by failing to notify her of the "in writing" requirement. She also alleged that omitting the "in writing" requirement violated § 1692e, which prohibits using "false representation or deceptive means to collect or attempt to collect any debt." The district court dismissed the complaint with prejudice for failure to state a claim. Bishop appealed.

The Court noted that the FDCPA defines "communication" as "the conveying of information regarding a debt directly or indirectly to any person through any medium." The attorney is a conduit to the consumer; thus, a debt-collection letter sent to the consumer's attorney is an indirect communication with the consumer.

In addition, the FDCPA contains protections for which representation by an attorney—no matter how competent—would make an inadequate substitute. The right to basic information does not evaporate upon retaining an attorney. Secion 1692g(b) requires debt collectors to provide the consumer with verification of contested debts. Nothing in the FDCPA suggests that this obligation is excused when the consumer is represented by an attorney.

The Court rejected the notion that § 1692g gives debt collectors discretion to omit the "in writing" requirement or cure improper notice by claiming waiver. The statute is clear. The debt collector "shall" notify the consumer of her right to dispute the debt in writing.

The communication alleged in this case omitted a material term required by § 1692g(a). Specifically, the letter did not inform Bishop that she must dispute her debt "in writing" to trigger her verification rights under § 1692g(b). By omitting this requirement, the defendants instructed Bishop that she could invoke § 1692g(b) by disputing her debt orally—a misstatement of the law surrounding debt-verification requests. This misrepresentation was not apparent on the face of the letter; it would thus state a claim even in jurisdictions that apply the "competent lawyer" standard.

Reversed and remanded.

LEGISLATION
Indiana
Foreclosure - Deficiency

2016 IN S 372. Enacted 3/21/2016. Effective immediately.

This bill provides that certain statutes are not intended to provide the owner of real estate subject to the issuance of process under a judgment or decree of foreclosure any protection or defense against a deficiency judgment for purposes of the borrower protections from liability that must be disclosed on a specified form required by amendments to a federal rule concerning mortgage disclosures.

The bill amends Ind. Code § 24-4.4-2-201, First Lien Mortgage Lending, Payoff amount provided -- Penalty for failure to provide – Applicability, to provide that this section is not intended to provide the owner of real estate subject to the issuance of process under a judgment or decree of foreclosure any protection or defense against a deficiency judgment for purposes of the borrower protections from liability that must be disclosed under 12 CFR 1026.38(p)(3) on the form required by 12 CFR 1026.38 ("Closing Disclosures" form under the Amendments to the 2013 Integrated Mortgage Disclosures Rule Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth In Lending Act (Regulation Z) and the 2013 Loan Originator Rule Under the Truth in Lending Act (Regulation Z)).

The bill makes the same addition to: Ind. Code § 24-4.5-2-209, Uniform Consumer Credit Code, Credit Sales, Maximum Charges, Right to prepay -- Maximum charge -- Time limitations – Liability; Ind. Code § 24-4.5-3-209, Uniform Consumer Credit Code, Loans, Maximum Charges, Right to prepay; and Ind. Code § 32-29-7-5, Property, Mortgages, Foreclosure -- Redemption, Sale, Right to Retain Possession, Waiver of time limitations on issuance of process.

LEGISLATION
Indiana
Sheriff's sale - Evaluation

2016 IN S 300. Enacted 3/21/2016. Effective 7/1/2016.

This bill amends Ind. Code § 25-34.1-3-2, Real Estate Brokers, Licensing, to provide that the licensing provisions do not apply to the performance of an evaluation of real property by an employee, an officer, a director, or a member of a credit or loan committee of a financial institution, or by any other person engaged by a financial institution, in a transaction for which the financial institution would not be required to use the services of a state licensed appraiser under regulations adopted under Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 et seq.).

The bill removes the requirement that property sold at sheriff's sale be appraised by amending Ind. Code §§ 32-17-4-2.5; 32-26-5-2; 32-28-3-6; 32-29-7-9; 32-30-3.1-12; 34-54-1-3; 34-55-4-5; 34-55-4-9; 34-55-5-1; 34-55-6-6 and repealing Ind. Code §§ 34-54-1-1; 34-54-1-2; 34-54-6-2; 34-55-4-1; 34-55-4-2; 34-55-4-3; 34-55-4-4; 34-55-4-6; 34-55-4-7; 34-55-4-12; 34-55-5-2.

LEGISLATION
South Dakota
Fees

2016 SD H 1005. Enacted 3/25/2016. Effective 7/1/2016.

S.D. Codified Laws § 7-12-18 has been amended to provide that the sheriff shall charge and remit the following:

For serving summons, complaint, warrant of attachment, affidavit, notice and undertaking in claim and delivery, or injunction, order to show cause, citation, or other

process, and return of the instrument, fifty (formerly, twenty-five) dollars for all such process or instruments served at the same time upon the same person regardless of the capacities in which such person is served. However, for all such process or instruments served upon another such person at approximately the same time at the same place, ten (formerly, five) dollars;

For serving writ of execution and return of the instrument, whether satisfied or unsatisfied, ninety-five (formerly, thirty-five) dollars;

For levying writ of possession, fifty (formerly, twenty-five) dollars. However, if the sale of the property levied upon is not subsequently held, the actual costs or expenses associated with levying writ of possession shall be paid;

For making deed for land sold on execution or order of sale, one hundred (formerly, fifty) dollars except no fee is charged when the deed only requires the sheriff's signature;

In addition to the applicable fees and expenses, a commission of six percent on all money received and disbursed by the sheriff on execution or order of sale, order of attachment, decree or on sale of real property or personal property. However, in no case may the commission be less than fifty dollars or more than three thousand five hundred dollars. If the execution or order of sale is a foreclosure of a real estate mortgage, the commission may not be more than one thousand five hundred dollars. (formerly, this subsection provided, "In addition to the applicable fees and expenses, a commission on all money received and disbursed by the sheriff on execution or order of sale, order of attachment, decree or on sale of real property or personal property, for each dollar not exceeding four hundred dollars, eleven cents; for each dollar above four hundred dollars, and not exceeding one thousand dollars, seven cents; for each dollar above one thousand dollars, and not exceeding fifteen thousand dollars, five cents; for each dollar above fifteen thousand dollars, and not exceeding twenty-five thousand dollars, three cents. However, in no case may the commission be less than twenty-five dollars");

For a case in the circuit court, if a person, in whose favor an execution or order of sale is issued, bids on the property sold on execution or decree, the sheriff or officer making the sale shall receive the following compensation: if the amount for which the property is bid on is one thousand dollars or less, the sum of forty (formerly, twenty) dollars; and if the amount for which the property is bid on is more than one thousand dollars, the sum of one hundred (formerly, fifty) dollars.

The bill repeals S. D. Codified Laws § 32-5-2.10, Record of sale, which provide that, at the time of sale of a vehicle, the seller shall file a report of sale with the department indicating the purchaser's name and address. Failure to file such a report is a Class 2 misdemeanor.

LEGISLATION

West Virginia

Default charges

2016 WV S 614. Enacted 3/29/2016. Effective 6/8/2016.

This bill amends W.Va. Code § 46A-2-115, Limitation on default charges, to provide that, with respect to the provision that, except for reasonable expenses, including costs and fees authorized by statute incurred in realizing on a security interest, the agreements that evidence a consumer credit sale or a consumer loan may not provide for charges as a result of default by the consumer other than those authorized by this chapter: (1) The phrase "consumer loan" shall mean a consumer loan secured by real property: (A) Originated by a bank or savings and loan association, or an affiliate, not solicited by an unaffiliated broker; (B) held by a federal home loan bank, the federal National Mortgage Association, the federal Home Loan Mortgage Corporation, the Government National Mortgage Association, the West Virginia Housing Development Fund; or (C) insured or guaranteed by the Farmers Home

Administration, the Veteran's Administration or the Department of Housing and Urban Development.

The agreements that evidence a consumer loan may permit the recovery of the following charges: (A) costs of publication; (B) an appraisal fee; (C) all costs incidental to a title examination including professional fees, expenses incident to travel, and copies of real estate and tax records; (D) expenses incidental to notice made to lienholders and other parties and entities having an interest in the real property to be sold; (E) certified mailing costs; and (F) all fees and expenses incurred by a trustee incident to a pending trustee's sale of the real property securing the consumer loan, except no charge may be assessed and collected from a consumer unless: (A) each charge is reasonable in its amount; (B) each charge is actually incurred by or on behalf of the holder of the consumer loan; (C) each charge is actually incurred after the last day allowed for cure of the consumer's default pursuant to section one hundred six, of this article and before the consumer reinstates the consumer loan or otherwise cures the default; (D) the holder of the consumer loan and the consumer have agreed to cancel any pending trustee's sale or other foreclosure on the real property securing the consumer loan; and (E) in the case of an appraisal fee, no appraisal fee has been charged to the consumer within the preceding six months.

The bill adds that nothing in this section limits the expenses incidental to a trustee's sale of real property that are recoverable pursuant to section seven, article one, chapter thirty-eight of this code.

W.Va. Code § 46A-2-121, Unconscionability; inducement by unconscionable conduct, has also been amended to specify that affirmative misrepresentations, active deceit or concealment of a material fact are examples of unconscionable conduct.

LEGISLATION
West Virginia
Communications

2016 WV H 4448. Enacted 3/24/2016. Effective 6/10/2016.

This bill amends W.Va. Code § 61-3C-14a, under the West Virginia Computer Crime and Abuse Act, to provide an exception to the prohibition against making contact with a person after being requested by the person to desist from contacting them; and providing that communications made by a lender or debt collector to a consumer regarding an overdue debt of the consumer that do not violate the West Virginia Consumer Credit and Protection Act are not a violation of the West Virginia Computer Crime and Abuse Act.

LEGISLATION
Wisconsin
Breakdown

2015 WI A 117. Enacted 2/29/2016. Effective 7/1/2016.

This bill amends Wis. Stat. § 425.109 by replacing "creditor" with "merchant."

(Note: according to Wis. Stat. § 421.301, "creditor" means a merchant who regularly engages in consumer credit transactions or in arranging for the extension of consumer credit by or procuring consumer credit from 3rd persons.

"Merchant" means a person who regularly advertises, distributes, offers, supplies or deals in real or personal property, services, money or credit in a manner which directly or indirectly results in or is intended or designed to result in, lead to or induce a consumer transaction. The term includes but is not limited to a seller, lessor, manufacturer, creditor, arranger of credit and any assignee of or successor to such person. The term also

includes a person who by his or her occupation holds himself or herself out as having knowledge or skill peculiar to such practices or to whom such knowledge or skill may be attributed by his or her employment as an agent, broker or other intermediary.)

The bill amends Wis. Stat. § 425.109 (1)(d) to provide that if the consumer credit transaction is pursuant to an open-end credit plan, the actual or estimated amount of U.S. dollars or of a named foreign currency that the merchant alleges he or she is entitled to recover and the figures necessary for computation of the amount alleged to be due to the merchant on a date certain after the customer's default. Figures necessary for computation shall mean the amount reflected on a billing statement addressed to the customer and a breakdown of all charges, interest, and payments, including any amount received from the sale of any collateral, occurring after this date certain. This paragraph does not require a specific itemization, but the breakdown shall identify separately the amount due on a date certain, the total of all charges occurring after this date certain, the total of all interest occurring after this date certain, and the total of all payments occurring after this date certain.

The bill adds Wis. Stat. § 425.109 (1)(d)2 to provide if the consumer credit transaction is other than one pursuant to an open-end credit plan, the actual or estimated amount of U.S. dollars or of a named foreign currency alleged to be due to the merchant on a date certain after the customer's default, and a breakdown of all charges, interest, and payments, including any amount received from the sale of any collateral, occurring after this date certain. This paragraph does not require a specific itemization, but the breakdown shall identify separately the amount due on a date certain, the total of all charges occurring after this date certain, the total of all interest occurring after this date certain, and the total of all payments occurring after this date certain.

Wis. Stat. § 425.109 (2) has been amended to provide that upon the written request of the customer under sub. (1)(h), the merchant shall submit accurate copies to the court and the customer of writings evidencing the customer's obligation pursuant to an open-end credit plan upon which the merchant's claim is made and default judgment may not be entered for the merchant unless the merchant does so. The writings requirement under this subsection is satisfied if the merchant provides the customer with a copy of the billing statement referenced in sub. (1)(d)1. addressed to the customer reflecting the total outstanding balance on the customer's account at the time this billing statement was issued. If this billing statement is attached to the complaint, then the statement under sub. (1)(h) is not required to be included in the complaint.

The bill amends Wis. Stat. § 425.205 (4) to provide that upon the written request of the customer under s. 425.109 (2), the merchant shall produce an accurate copy of writings evidencing the customer's obligation pursuant to an open-end credit plan upon which the merchant's claim is made, and default judgment shall not be entered for the merchant unless the merchant does so. The writings requirement under this subsection is satisfied if the merchant provides the customer with a copy of the billing statement referenced in s. 425.109 (1)(d)1. addressed to the customer reflecting the total outstanding balance on the customer's account at the time this billing statement was issued. If this billing statement is attached to the complaint, then the statement under s. 425.109 (1)(h) is not required to be included in the complaint.

INSTALLATION

LEGISLATION

Utah

Mobile homes

2016 UT H 316. Enacted 3/24/2016. Effective 7/1/2016.

This bill repeals provisions of Utah Code Ann. § 15A-3-801 pertaining to mobile homes and enacts, instead, Part 9, Installation and Safety Requirements for Mobile Homes Built Before June 15, 1976, Utah Code Ann. § 15A-3-901.

LENDING

CASE LAW

ECOA – Spousal guarantee

CASE NAME: *Hawkins v. Community Bank of Raymore*
DATE: *03/22/2016*
CITATION: *Supreme Court of the United States. --- S.Ct. ---. 2016 WL 1092416*

The judgment in *Hawkins v. Community Bank of Raymore*, 761 F.3d 937 (8th Cir. 2014), holding that a guarantor spouse was not considered an applicant under ECOA, and thus could not sue under ECOA, was affirmed by an equally divided Court.

This left intact a circuit split as, in *RL BB Acquisition, LLC v. Bridgemill Commons Dev. Grp.*, 754 F.3d 380 (6th Cir. 2014), the 6th Circuit held that a spouse guarantor was considered an applicant under ECOA.

LEGISLATION

Arizona

Consumer lender loans – Referrals - Insurance

2016 AZ H 2152. Enacted 3/24/2016. Effective 8/26/2016 (projected).

This bill amends Ariz. Rev. Stat. § 6-611 to delete the provision that, except as otherwise provided in this subsection, a licensee shall not pay a fee, commission or bonus or give anything of value to any merchant, dealer, consumer or other person for referring consumer lender loan business, other than the fees permitted pursuant to the Real Estate Settlement Procedures Act (12 United States Code sections 2601 through 2617), as amended, and the regulations promulgated under that act (24 Code of Federal Regulations part 3500), as amended, or persons exempt from licensing pursuant to section 6-602 in connection with any consumer loan or consumer revolving loan that is secured by the consumer's principal residence or any home equity revolving loan. A licensee may not give a consumer any prize, good, ware, merchandise or tangible property of an aggregate value of more than twenty-five dollars.

The bill amends Ariz. Rev. Stat. § 6-636 to provide that the following types of insurance may be sold to the consumer in connection with a consumer lender loan and the consumer may contract for:

Accidental death and dismemberment insurance providing a benefit if death occurs as a result of an accident or if dismemberment occurs;

Disability income protection insurance providing a benefit if a total disability occurs during the term of insurance.

The bill amends Ariz. Rev. Stat. § 6-638 to provide that a licensee who is licensed to sell disability insurance pursuant to Title 20 may sell and include in the principal amount of the consumer lender loan the cost of the premium for accidental death and dismemberment insurance or disability income protection insurance, or both, if all of the following apply:

1. The insurance policy or certificate is approved by the director of the department of insurance.

2. The purchase of the insurance is not a condition of the consumer lender loan.

3. The consumer signs an application for the insurance that is separate from the consumer lender loan application.

4. The licensee does not offer or discuss with the consumer the option of accidental death and dismemberment insurance or disability income protection insurance until after the consumer lender loan

application is completed and the consumer lender loan is approved.

LEGISLATION
Colorado
Disclosures

2016 CO S 14. Enacted 3/16/2016. Effective immediately.

This bill amends Colo. Rev. Stat. § 12-61-914, under the Mortgage Loan Originator Licensing and Mortgage Company Registration Act and repeals Colo. Rev. Stat. § 38-40-102, regarding Mortgage Brokers – Lenders, Disclosure of costs - statement of terms of indebtedness, regarding deadlines for disclosures of costs and fees and replaces those provisions with cross references to applicable requirements in the federal Truth in Lending Act, the federal Real Estate Settlement Procedures Act of 1974, and other statutes and rules governing the activities of mortgage loan originators.

LEGISLATION
Florida
Referrals - Satisfactions

2016 FL H 145. Enacted 3/10/2016. Effective 7/1/2016.

This bill amends Fla. Stat. § 516.07 to provide that it is grounds for denial of a consumer loan license or for disciplinary action to pay money or anything else of value, directly or indirectly, to any person as compensation, inducement, or reward for referring loan applicants to a licensee, if such amount is charged directly or indirectly to the borrower (adding the final clause).

The bill amends Fla. Stat. § 670.108 to provide that Chapter 670, Uniform Commercial Code: Funds Transfers, applies to a funds transfer that is a remittance transfer as defined in the Electronic Fund Transfer Act, 15 U.S.C. s. 1693o-1, as amended from time to time, unless the remittance transfer is an electronic fund transfer as defined in the Electronic Fund Transfer Act, 15 U.S.C s. 1693a, as amended from time to time.

If there is an inconsistency between a funds transfer under this chapter and the Electronic Fund Transfer Act, the Electronic Fund Transfer Act governs the inconsistency.

Fla. Stat. § 701.03 has been amended to provide that whenever the amount of money due under a promissory note secured by a (adding reference to promissory note) mortgage is be fully paid, the mortgagee or assignee shall within 45 (formerly, 60) days after satisfaction of the mortgage thereafter cancel the mortgage in the manner provided by law, unless the mortgage is an open-end mortgage (adding the final clause).

The bill adds that a mortgage that is an open-end mortgage as provided in the loan agreement may be canceled upon written notice from the borrower of the intent to close the mortgage. The mortgagee or assignee shall cancel the open-end mortgage within 45 days after receiving the notice. This subsection does not apply to an open-end mortgage existing before July 1, 2016, if the loan agreement contained procedures for canceling the mortgage.

LEGISLATION
South Dakota
Interest rates

2016 SD S 57. Enacted 3/7/2016. Effective 7/1/2016.

This bill amends S.D. Codified Laws § 54-3-1.1, under the Interest and Usury Chapter, to redefine the term, "written agreement," relating to contracts between a debtor and creditor.

The section provides that unless a maximum interest rate or charge is specifically established elsewhere in the

code, there is no maximum interest rate or charge, or usury rate restriction between or among persons, corporations, limited liability companies, estates, fiduciaries, associations, or any other entities if they establish the interest rate or charge by written agreement.

The amendment adds that a written agreement is a document in writing, whether in physical or electronic form, in which the parties have demonstrated their agreement to the terms and conditions of an extension of credit, including the rate of interest.

LEGISLATION

Virginia

Disclosures

2016 VA H 123. Enacted 3/11/2016. Effective 7/1/2016.

This bill amends Va. Code Ann. § 6.2-406, Disclosure of terms of mortgage application, to delete the requirement that a residential mortgage lender's or broker's disclosure statement state that all the loan terms not legally locked in are subject to change until settlement and to qualify the requirement to describe when the interest, points, and fees will be locked in to those loans for which such terms will be locked in.

REGULATOR ADVISORY

Board of Governors of the Federal Reserve System

Federal Deposit Insurance Corporation

Office of the Comptroller of the Currency

Evaluations

Interagency Advisory on Use of Evaluations in Real Estate-Related Financial Transactions.

Issued 3/4/2016.

This advisory pertains to the circumstances under which evaluations may be used in the underwriting of real estate-related financial transactions and how to support a market value conclusion when there have been few or no recent comparable sales. The federal banking agencies provided this advisory to describe existing supervisory expectations, guidance, and industry practice.

Under the appraisal regulations, the following transaction types do not require an appraisal, but do require an evaluation:

• Transactions where the "transaction value" (generally the loan amount) is $250,000 or less;

• Certain renewals, refinances, or other transactions involving existing extensions of credit; and

• Real estate-secured business loans with a transaction value of $1,000,000 or less and when the sale of, or rental income derived from, real estate is not the primary source of repayment for the loan.

There may be instances when a financial institution finds it prudent or necessary to go beyond the requirements of the agencies' appraisal regulations. For example, obtaining an appraisal may be prudent for credit risk management purposes or may be a prerequisite to participating in some secondary market transactions. Additionally, a financial institution may find it prudent to obtain an appraisal rather than an evaluation when the institution's portfolio risk increases or for higher-risk real estate-related financial transactions.

An evaluation is not required to be completed by a state-licensed or state-certified appraiser or to comply with USPAP. Evaluations may be completed by a bank employee or by a third party.

The valuation profession considers three approaches to valuing real estate, namely the sales comparison approach, the cost approach, and the income approach. An evaluation should provide a reliable estimate of the market value of the property and, therefore, the

approach or approaches used in an evaluation should be appropriate to the property being valued.

The Guidelines provide information regarding the minimum content that should be contained in an evaluation. Unlike an appraisal report that must be written in conformity with the requirements of USPAP, there is no standard format for documenting the information and analysis performed to reach a market value conclusion in an evaluation. Regardless of the approach or methodology used to estimate the market value of real property, an evaluation should contain sufficient information to allow a reader to understand the analysis that was performed to support the value conclusion and the institution's decision to engage in the transaction.

LICENSING

LEGISLATION
South Carolina
Dealers

2015 SC H 3881. Enacted 2/16/2016. Effective immediately.

This bill adds S.C. Code Ann § 40-29-327 to provide that each licensed manufactured housing retail dealer location must have one authorized official representing the dealership. An authorized official who is not the dealer must hold a manufactured home retail salesperson or retail dealer license. The board must be notified in writing within twenty days if the authorized official changes.

LEGISLATION
Utah
Mortgage lenders

2016 UT H 177. Enacted 3/21/2016. Effective 5/9/2016.

This bill amends Utah Code Ann. § 70D-2-102, under the Mortgage Lending and Servicing Act, to provide that "lender" includes a mortgage lender.

The bill provides that "mortgage lender" means an entity that performs each of the following related to originating a mortgage loan:

(a) taking and processing an application;

(b) providing a required disclosure;

(c) in some circumstances, underwriting the mortgage loan and making the final credit approval decision;

(d) closing the mortgage loan in its name;

(e) funding the mortgage loan; and

(f) selling the mortgage loan to an investor.

The bill amends Utah Code Ann. § 70D-2-201 to provide that registration is not required for a person who is required to be licensed with the Division of Real Estate pursuant to Title 61, Chapter 2C, the Utah Residential Mortgage Practices and Licensing Act; and is not a mortgage lender.

The bill adds that a mortgage lender who is required to be registered under this chapter is not exempt from Title 61, Chapter 2C, Utah Residential Mortgage Practices and Licensing Act.

LEGISLATION
Wisconsin
Collection agencies

2015 WI S 438. Enacted 3/1/2016. Effective 3/3/2016.

Amends Wis. Stat. § 218.04 to allow an employee of a licensed collection agency to work from the employee's home and clarifies, in doing so, that the employee is not required to be separately licensed as a collector or solicitor, and that the employee must comply with all of

the same requirements that would apply to an employee working within the licensed office of the agency.

SALES

PENDING LEGISLATION

New York

Mobile home replacement

2015 NY S 6954. Introduced 3/9/2016.

This bill was introduced on 3/9/2016 as the Rural Mobile Home Replacement Program, and was intended to fund the replacement of mobile homes with new affordable and energy efficient modular or stick-built homes.

On 3/30/2016, the bill was amended to be known as the Mobile And Manufactured Home Replacement Program, and would now establish a program to fund the replacement of mobile or manufactured homes with new affordable and energy efficient manufactured, modular or site-built homes.

The bill provides that the housing trust fund corporation shall require that, in order to receive a grant pursuant to this article, the eligible property owner shall have no liens on the land after closing the grant other than the new home financing and currently existing mortgage or mortgages, and all property taxes and insurance must be current.

Financial assistance to eligible property owners shall be one hundred percent grants in the form of deferred payment loans (DPL). A ten year declining balance lien in the form of a note and mortgage, duly filed at the county clerk's office, will be utilized for replacement projects. No interest or payments will be required on the DPL unless the property is sold or transferred before the regulatory term expires. In such cases funds will be recaptured from the proceeds of the sale of the home, on a declining balance basis, unless an income-eligible immediate family member accepts ownership of, and resides in the new replacement home for the remainder of the regulatory term. In addition the mobile and manufactured home replacement program established by this article shall: (a) provide funds for relocation assistance to homeowners who are unable to voluntarily relocate during the demolition and construction phases of the project; (b) provide funding for the costs of demolishing and disposing of the dilapidated home; and (c) complement and be in addition to any existing mobile home replacement established under the New York state HOME program pursuant to section eleven hundred seventy-two of this chapter, or any successor thereto, and funded with federal funds.

TITLING AND PERFECTION

LEGISLATION

Indiana

Titling - Fees

2016 IN H 1087. Enacted 3/24/2016. Effective 7/1/2016, except as noted.

Effective immediately, this bill amends Ind. Code § 9-13-2-96, under the definition of “manufactured home,” to provide that the definition does not include a mobile home after June 30, 2016.

The bill amends Ind. Code § 9-13-2-121 to provide that, except as otherwise provided in Ind. Code § 9-31, "owner" means a person, other than a lienholder, that:

(1) holds the property in or title to, as applicable, a vehicle, manufactured home, mobile home, off-road vehicle, snowmobile, or watercraft; or

(2) is entitled to the use or possession of, as applicable, a vehicle, manufactured home, off-road vehicle, snowmobile, or watercraft, through a lease or other agreement intended to operate as a security.

Ind. Code § 9-13-2-196 has been amended to provide that, for purposes of Ind. Code § 9-17, the term, "vehicle," includes the following:

(1) Off-road vehicles.

(2) Manufactured homes or mobile homes that are:

(A) personal property not held for resale; and

(B) not attached to real estate by a permanent foundation.

(3) Watercraft.

The bill adds Ind. Code § 9-17-1-0.5 to provide that the following are required to be titled under this article:

(1) Off-road vehicles.

(2) Watercraft.

(3) Manufactured or mobile homes that are:

(A) personal property not held for resale; or

(B) not attached to real estate by a permanent foundation.

The bill amends Ind. Code §§ 9-17-2-2 and 9-17-2-4 re: application for a certificate of title.

Ind. Code § 9-17-2-14.5 has been enacted to establish the fees for issuing certificates of title.

Also enacted is Ind. Code § 9-17-2-14.7 to provide that, except as otherwise provided, a person must apply for a certificate of title for a vehicle within forty-five (45) days after the date on which the person acquires the vehicle.

This section does not apply to a mobile home or a manufactured home.

The bill adds Ind. Code § 9-17-2-19 to provide that a certificate of title issued for a manufactured or mobile home is valid for the life of the manufactured or mobile home:

(1) as long as the manufactured or mobile home is owned or held by the original holder of the certificate of title or a legal transferee of the certificate of title; or

(2) until the manufactured or mobile home is transferred to real estate under section 15.1 of this chapter.

The bill amends Ind. Code § 9-17-6-15.1 to provide that the fee for an affidavit of transfer of a manufactured home that is attached to real estate by a permanent foundation to real estate is as follows:

(1) For an application made before January 1, 2017, twenty dollars ($20).

(2) For an application made after December 31, 2017, fifteen dollars ($15).

Also added is Ind. Code § 9-20-14-0.5 to provide that, as used in this chapter (Special Restrictions Concerning Tractor-Mobile Home Rigs and Required Permits), "person" means:

(1) a mobile home or sectionalized building transport company;

(2) a mobile home or sectionalized building manufacturer;

(3) a mobile home or sectionalized building dealer; or

(4) a mobile home or sectionalized building owner.

The bill amends Ind. Code § 9-20-14-2 to provide that, except as provided below, the fee for a person that is not a mobile home or sectionalized building retail dealer to move a tractor-mobile home rig under this section is ten dollars ($10) per trip.

A person that is not a mobile home or sectionalized building retail dealer may purchase a quarterly permit for unlimited trips during the quarter to move a tractor-mobile home rig under this section. The fee for a quarterly permit is two hundred fifty dollars ($250).

A person that is not a mobile home or sectionalized building retail dealer may purchase an annual permit for

unlimited trips during the year to move a tractor-mobile home rig under this section. The fee for an annual permit is one thousand dollars ($1,000).

The fee for a person that is a mobile home or sectionalized building retail dealer to move tractor-mobile home rigs under this section is forty dollars ($40). The fee shall be paid annually.

Ind. Code § 9-20-15-0.5 is added to provide that, as used in this chapter (Special Restrictions Concerning Special Tractor-Mobile Home Rigs and Required Permits), "person" means:

(1) a mobile home or sectionalized building transport company;

(2) a mobile home or sectionalized building manufacturer;

(3) a mobile home or sectionalized building dealer; or

(4) a mobile home or sectionalized building owner.

The bill amends Ind. Code § 9-20-15-1 to provide that, except as provided below, the fee for a person to move a special tractor-mobile home rig is eighteen dollars ($18) per trip.

A person may purchase a quarterly permit for unlimited trips during the quarter to move a special tractor-mobile home rig. The fee for a quarterly permit is five hundred dollars ($500).

A person may purchase an annual permit for unlimited trips during the year to move a special tractor-mobile home rig. The fee for an annual permit is two thousand dollars ($2,000).

Ind. Code § 9-20-15-2.1 has been amended to provide that the fee for an annual permit to move tractor-mobile home rigs from the manufacturing facility to a storage lot by a manufacturer of mobile homes or an agent of a manufacturer of mobile homes is forty dollars ($40) for each three (3) mile increment that a tractor-mobile home rig is transported up to a maximum of fifteen (15) miles. A fee imposed under this section may not exceed two hundred dollars ($200).

The bill amends Ind. Code § 9-20-15-6 to provide that if the Indiana department of transportation adopts rules under this section to issue permits for extra wide manufactured home rigs, the fee for a permit is thirty dollars ($30).

LEGISLATION
South Dakota
Timing

2016 SD H 1095. Enacted 3/7/2016. Effective 7/1/2016.

This bill amends S.D. Codified Laws § 32-3-3.1 to provide that if a mobile home or manufactured home is sold by a dealer, the licensed dealer shall deliver to the county treasurer the manufacturer's statement of origin, the manufacturer's certificate of origin, or the title for the mobile home or manufactured home, together with the required fees and completed forms necessary to accomplish the initial registration within forty-five (formerly, 30) days of the sale. For mobile homes or manufactured homes not sold by a licensed dealer, the purchaser shall register and title the mobile home or manufactured home within forty-five days (formerly, 30).

The bill also amends S.D. Codified Laws § 32-7A-4.2 to provide that the department may deny any application for a license as a manufactured housing dealer or manufacturer, or may apply the provisions of §§ 32-7A-4.3 to 32-7A-4.8 (revocation, cease and desist orders), inclusive, on any license issued under the provisions of this chapter, for failure to deliver the manufacturer's statement of origin to the county treasurer or the certificate of title to a person entitled to it within forty-five (formerly, 30) days after date of delivery.

LEGISLATION

South Dakota

Where filed

2016 SD H 1005. Enacted 3/25/2016. Effective 7/1/2016.

This bill amends S.D. Codified Laws § 32-3-18 to provide that application for a certificate of title shall be made to the county treasurer, upon a form prescribed by the secretary of revenue. Formerly, application was to be made to the secretary.

Increases the application fee from $5 to $10.

The bill amends S.D. Codified Laws § 32-3-45 to provide that the county treasurer shall charge a fee of ten (formerly, five) dollars for each notation of any lien on a certificate of title.

Amends S.D. Codified Laws § 32-3A-25. The county treasurer shall charge a ten (formerly, five) dollar fee for issuance of a certificate of title, a transfer of title, or a corrected certificate of title.

If a certificate of title is lost, stolen, mutilated, destroyed, or becomes illegible, the owner named in the certificate shall obtain a duplicate by applying to the county treasurer (formerly, the county register of deeds).

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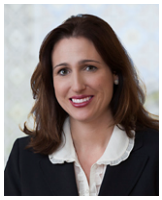

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