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!

Welcome readers. The May Update has items of interest for everyone involved in the manufactured housing industry, including lenders, community owners, retailers, installers and manufacturers.

For starters, the Department of Energy issued its proposed Energy Conservation Standards for Manufactured Homes.

Next, if you are a community owner/operator and impose supervision or similar requirements for children in your community by regulation, there is a fair housing case from California that you should read. Arizona was particularly active on the legislative front enacting legislation impacting manufactured housing communities.

If you are a servicer of loans subject to RESPA, pay particular attention to our write-up of the Eleventh Circuit's decision involving the use of a form letter to respond to a notice of error. The Texas Supreme Court's decision regarding the home equity provisions of the Texas constitution may also be of particular interest. The same is true for the SCRA case.

These items and more. So read on.

IN THIS ISSUE

Contents

WELCOME!	1
ARBITRATION	2
COMMUNITIES	4
DEFAULT SERVICING	12
INSTALLATION	22
LENDING	24
LICENSING	25
MANUFACTURING	27
SALES	28
TITLING AND PERFECTION	28

ARBITRATION

CASE LAW

Fraudulent inducement

☹

CASE NAME: *Adams v. CMH Homes, Inc.*
DATE: *01/07/2016*
CITATION: *Court of Appeals of Tennessee, AT KNOXVILLE. Slip Copy. 2016 WL 1719373*

Plaintiffs bought a manufactured home from Defendant and paid a $500 deposit. On December 23, 2013, Plaintiffs closed the loan with Lender, Athens Federal Community Bank. Lender issued a check payable to Defendant in the amount of the first payment, $50,674.71. That same day, Plaintiffs visited Defendant's office and tendered the check.

On December 26, 2013, Hagood, Defendant's general manager, called the Plaintiffs and told them that he had "some additional paperwork we need you to sign so we can move this house." The parties did not discuss the contents of the documents, which Mr. Adams did not read. Plaintiffs believed the transaction was already complete and relied on Hagood's assertion that they had to sign the documents in order to get the house moved to their property. Plaintiffs signed the documents, including an arbitration agreement.

Plaintiffs subsequently sued, alleging negligence in the transport, repair, and installation of the home, breach of contract, and intentional and negligent misrepresentation.

After the Tennessee Supreme Court's decision in *Berent v. CMH Homes, Inc., 466 S.W.3d 740 (Tenn.2015)* (see the June 2015 McGlinchey Stafford Manufactured Housing Law Update), Defendant filed a motion to compel arbitration, Plaintiffs filed a response alleging that Defendant fraudulently induced them to sign the arbitration agreement.

The trial court denied the motion to compel and rejected Defendant's assertion that Plaintiffs had waived their fraudulent inducement claim by not raising it earlier in the litigation. Defendant appealed.

The parties agreed that the issue of fraudulent inducement was not subject to the Arbitration Agreement, which provided that "objections with respect to the existence, scope, and validity of this Agreement, shall be determined solely by a court of competent jurisdiction, and not by the Arbitrator."

The appeals court found that Plaintiffs timely filed a response raising the issue of fraudulent inducement, that the Binding Dispute Resolution Agreement was a separate agreement, and, under these facts, the allegations of fraudulent inducement more closely resemble a defense (which is properly raised in a response) as opposed to a stand-alone claim.

The Court noted that Hagood's response to interrogatories demonstrated that Hagood's statement that Plaintiffs had to sign all the documents before the house could be moved was false, even though he did not know the statement was false when he made it. What was material was CMH's failure to make sure that its general manager was fully versed in his duty of handling the closing of sales. This suit was against CMH, not Hagood. CMH's failure to ensure that its general manager was fully informed showed utter disregard for the truth.

In addition, Plaintiffs argued that it was enormously material to them to get their home delivered to their property and set up as soon as possible. Hagood testified that he knew they were living in a trailer on their property. Moreover, at the time Hagood told them they had to sign the papers to get the home, Plaintiffs had already paid Defendant $50,674.71 as partial payment for the home. The trial court rejected Defendant's characterization of this payment as a "deposit."

Affirmed.

CASE LAW

Foreclosure - Counterclaims

CASE NAME: *U.S. Bank Natl. Assn. v. Allen*
DATE: *05/02/2016*
CITATION: *Court of Appeals of Ohio, Third District, Paulding County. Slip Copy. 2016 WL 1730582*

U.S. Bank, as holder of the mortgage, filed a complaint in foreclosure alleging Allen defaulted on a promissory note executed for the purchase of a manufactured home.

Allen asserted numerous affirmative defenses and counterclaims, most of which involved allegations of wrongdoing by Green Tree regarding their representations about the condition of the manufactured home, its conduct during the sale, and its subsequent servicing of the loan. According to Allen, she also purchased a Manufactured Home Service Contract from Green Tree which covered repairs and replacement of damaged items. Allen claimed Green Tree failed to act in compliance with the service contract.

The trial court granted Plaintiffs' Motion to Compel Arbitration. Allen's Counterclaims were bifurcated from the initiating action and compelled to binding arbitration. Allen appealed.

The appeals court noted that the arbitration clause in the promissory note expressly stated that the filing of a judicial action in foreclosure did not constitute a waiver of the right to arbitrate any counterclaims brought by Appellant. Nor did the Court find an affirmative basis to conclude that Appellees abandoned their right to arbitrate in order to pursue litigation of the counterclaims in the trial court action.

The Court also noted that Ohio Rev. Code § 2711.01(B)(1) expressly states that the arbitration statutes do not apply to controversies involving the title to real estate. Therefore, because a foreclosure action involves title to real estate it is not an arbitrable matter. Accordingly, U.S. Bank was required to file a lawsuit to initiate the foreclosure procedure and, by doing so did not waive its right to arbitrate matters that fell within the parties' agreement to arbitrate.

There were two arbitration provisions implicated in this case. The first one appears in the promissory note. The other appears in the "Manufactured Home Service Contract."

Both arbitration provisions represent the parties' agreement to arbitrate all disputes, claims, or controversies arising from or relating to those contracts. The Court found that Allen's counterclaims constituted disputes, claims, or controversies arising out of one or both of the agreements at issue and therefore did not fall outside the bounds of the arbitration provisions simply because the ultimate determination of foreclosure must be litigated in a court action.

However, the trial court failed to determine which arbitration provision applied to each of the Appellant's six counterclaims. The trial court attempted to resolve the issue by ordering new terms of arbitration, not included in either arbitration agreement, to govern the resolution of Appellant's counterclaims, but this agreement was never reduced to writing, and was, therefore, not enforceable.

Finally, when a trial court determines that certain claims are subject to arbitration, it must stay the entire proceeding until those claims have been arbitrated, even though the action may involve both arbitrable and non-arbitrable claims. Accordingly, the trial court erred in failing to issue an order of stay of the foreclosure proceeding when it granted Appellees' motion to compel arbitration of Appellant's counterclaims. The judgment was affirmed in part and reversed in part and remanded.

COMMUNITIES

CASE LAW

Abandoned home – Demolition

CASE NAME: *Everett Ashton, Inc. v. City of Concord*
DATE: *04/29/2016*
CITATION: *Supreme Court of New Hampshire. --- A.3d ----. 2016 WL 1719255*

Everett Ashton, Inc. owned a manufactured housing park in Concord. Tenants of the park own the manufactured homes, and they alone pay property taxes on the homes. The City billed the tenants directly for water and sewer services.

Three tenants abandoned their manufactured homes. Everett Ashton obtained writs of possession, and sought to remove them from its park, applying for demolition permits from the City, because the homes had no value. The City refused to issue the permits because of outstanding property taxes owed on the homes. The City filed tax liens on the homes in Everett Ashton's name. The City also sent Everett Ashton water bills for one of the homes.

Everett Ashton sued the City and the trial court ruled that the City was required to issue the demolition permits, that the City could not place a lien on Everett Ashton's land for the unpaid water bills, and that Everett Ashton was entitled to compensation and attorney's fees because the City's refusal to issue the demolition permits resulted in a regulatory taking. The City appealed.

The appeals court found that the City refused to allow Everett Ashton to remove the valueless, abandoned homes until it paid taxes thereon, despite express statutory provision that park owners are not responsible for such taxes, and concluded that this refusal exceeded the scope of the discretion granted to the City. The Court therefore upheld the trial court's ruling that the City must issue the demolition permits.

However, the Court found that nothing prevented the City from placing a lien on Everett Ashton's land for the unpaid water bills. The statute merely states that, if a park owner installs utility meters on its tenants' manufactured homes, the municipality must send individualized utility bills to the park owner's tenants. The statute does not state that, after utility meters are installed, the municipality may no longer place a lien on the park owner's land if the tenants fail to pay their bills. Manufactured housing may be taxed as real estate, but that does not mean that "real estate" refers only to the manufactured homes. The Court interpreted "real estate" to include the land upon which utility services are furnished. Accordingly, the Court reversed the ruling that the City could not place a lien on Everett Ashton's land for its tenants' unpaid water bills.

The Court also found that the City misinterpreted a statute which provides that it may allow a park owner to relocate manufactured homes with outstanding taxes to mean that it may refuse to allow relocation in the circumstances of this case. However, because Everett Ashton did not challenge the statute's validity, and the misapplication of a valid statute does not effect a regulatory taking, the Court held that no taking occurred.

Affirmed in part and reversed in part, vacated in part, and remanded.

CASE LAW

Sale of home – Oral agreement

CASE NAME: *Helms v. Swansen*
DATE: *04/29/2016*
CITATION: *Court of Appeals of Texas, Tyler. Not Reported in S.W.3d. 2016 WL 1730737*

Swansen purchased a new mobile home and moved it onto a lot in Spring Lake Mobile Home Park, owned by Helms. Swansen moved to Kansas, leaving her mobile home in Helms's park. Swansen and Helms had an oral agreement that Helms would try to sell the mobile home.

Swansen testified that she signed the title in Helms's presence, leaving the new owner's name blank, and left it with Helms before she moved. Helms was to add the new owner's name to the title when she found a buyer, and that she did not give the title to Helms to convey the home to Helms. According to Swansen, Helms was to take lot rent out of the buyer's payments.

Helms stated that Swansen wanted to sign the home over to Helms when Swansen was filing bankruptcy because she was going to lose it anyway. According to Helms, Swansen then mailed her the title so she could put her own name on the title in satisfaction for back rent. After she accepted the title, making her owner of the mobile home, Helms made a deal to owner-finance the home. Helms sent Swansen two checks, but denied sending them as payments for the home, but rather because Swansen was going through a hard time and did not have any groceries. The buyer stopped paying, and Helms did not try to find another buyer. That was not a breach of the agreement, she reasoned, because Swansen had already signed the home over to Helms. Helms submitted an application for title to the State of Texas to have title to the home put in her name.

The trial court entered judgment finding the home belonged to Swansen, and Helms appealed.

The appeals court found that the terms of the agreement were sufficiently definite for the trial court to understand the parties' legal obligations and, therefore, there was an enforceable contract. The evidence supported the determination that there was an exchange of mutual promises, satisfying the consideration requirement.

The Court presumed the trial court resolved any conflict in favor of Swansen, and disregarded Helms's conflicting testimony. Thus, putting title in her name constituted a breach of the contract by Helms, resulting in Swansen's loss of the home.

Pursuant to the terms of the contract, Swansen retained ownership of the home until it sold. There was an attempted sale, but it fell through. Therefore, Swansen remained the owner. Although Helms presented evidence that she paid for taxes, maintenance, repair, and insurance, the Court found no evidence that she did so pursuant to an agreement with Swansen. Further, Helms's act of applying to put title in her name was a material breach of the parties' agreement. Accordingly, there was no requirement that Swansen put Helms back in the position she was in before they entered into their contract. The trial court did not err in ordering the title to the mobile home to be reformed and reissued to Swansen and that Swansen may take possession of the home.

The Court affirmed that portion of the trial court's judgment concerning title to and possession of the mobile home. Because Swansen did not present legally sufficient evidence to support the award of attorney's fees, that portion of the trial court's judgment awarding attorney's fees to Swansen was reversed, and the case remanded to the trial court to redetermine attorney's fees.

CASE LAW

Fair Housing Act – Discrimination

CASE NAME: *Bischoff v. Brittain*
DATE: *05/02/2016*
CITATION: *United States District Court, E.D. California. --- F.Supp.3d ----. 2016 WL 1734779*

Plaintiffs Scott Bischoff, Leron Dempsey, and Project Sentinel, Inc. filed suit against RZM Investment Enterprise, LLC, J.A. Brittain, Limited, Keith Johnson, and Sandra Brittain, alleging that their housing practices discriminate based on familial status.

According to the Court, with respect to facially discriminatory housing policies, “a plaintiff makes out a prima facie case of intentional discrimination under the [FHA] merely by showing that a protected group has

been subjected to explicitly differential—i.e. discriminatory—treatment. The Court found that Brittain Commercial's policy toward unsupervised young children inherently treats children differently than adults by limiting when they may use the common areas of the complex to times when they are supervised by an adult.

According to the Court, the policy also treats parents of young children differently by subjecting them to certain consequences if their children are found unsupervised. In contrast to households with children, adult-only households may use the entire premises of the complex without limitation and without the risk of receiving warnings or facing eviction for violating the adult supervision guidelines. Because families with children are subjected to explicitly differential treatment by Brittain Commercial, Project Sentinel established a prima facie case of facial discrimination.

Once a plaintiff has made out a prima facie case of facial discrimination, defendants must show their facially discriminatory adult supervision policy benefits families with young children or responds to legitimate safety concerns that are not based on stereotypes.

Here, the Court found that defendants' articulated safety concerns may be entirely well-meaning, but were based largely on unfounded speculation. Defendants' guidelines were not adequately tailored to respond to those purported concerns.

Defendants did not submit any evidence that managers were told to apply the policy only if a young child's safety was threatened, or that managers in practice applied the policy in such a way. Defendants stated that one of the "primary goals" of the guidelines was to limit disturbances to other residents by children, which likely encompassed situations beyond those in which a child's safety is legitimately threatened.

The Court also found that, where a property manager violates fair housing requirements, the property owner is vicariously liable for those violations.

The Court granted plaintiffs' motion for partial summary judgment as to the liability of Brittain Commercial and RZM under 42 U.S.C. § 3604(b).

CASE LAW

Fair Housing Act – Reasonable accommodation

☹

CASE NAME: *Pomaville v. Finney Flats, LLC*
DATE: *05/02/2016*
CITATION: *United States District Court, D. Arizona. Slip Copy. 2016 WL 1730510*

The plaintiff rented a mobile home lot in The Village at Camp Verde Mobile Home Park owned by defendant Finney Flats, LLC and managed by defendant NTH Property Management, LLC. Prior to moving in the plaintiff informed the manager of his disabilities and requested an accommodation for his service dog because the manager said that he would be unable to have his dog reside with him because it was a pet and not a service animal, and it was over the thirty-pound weight limit for a pet dog set by Village's rules and regulations.

The plaintiff filed a civil rights complaint with the Arizona Attorney General's office in May 2015 based on his failure to receive an accommodation for his dog. In late September 2015, NTH Property Management, informed him that an eviction proceeding would be commenced unless he removed his dog within fourteen days. The plaintiff again advised that he was disabled and that his dog was a service animal. NTH Property Management returned the plaintiff's check for the October 2015 rent based on the eviction letter.

The plaintiff sued, raising five claims against both defendants. NTH Property Management moved to dismiss all of the claims against it. Finney Flats filed an answer rather than joining in the motion to dismiss.

The Court found that the Arizona Services Animal Act does not make having a "licensed" service animal an element of a discrimination claim under the ASAA.

The Court also found that the allegations that the Village was a "public place" under the ASAA were sufficient.

Although the Court agreed with the defendant that the plaintiff's claim for retaliation under the Arizona Residential Landlord and Tenant Act was inapplicable, it found that the correct retaliation claim under the Arizona Mobile Home Parks Residential Landlord and Tenant Act was identical to the statute cited in the complaint. Because NTH Property Management was clearly not led astray by the plaintiff's failure to cite the correct retaliation statute, the Court concluded that exalting form over substance would serve no purpose here.

The plaintiff's claim under the Arizonans With Disabilities Act and his claim under the Americans With Disabilities Act both arose from an alleged lack of proper handicap parking outside of the Village's office. Both statutes prohibit discrimination on the basis of disability by a person who owns or operates a "place of public accommodation." The Court found that whether the Village, or any part of it, was a place of public accommodation for purposes of the AzDA or the ADA could not be resolved on the record through a motion to dismiss.

Motion to dismiss denied.

CASE LAW

Damages

☹

CASE NAME: *De Stefano v. Apts. Downtown, Inc.*
DATE: *05/06/2016*
CITATION: *Supreme Court of Iowa. --- N.W.2d ----. 2016 WL 2609528*

Tenants rented a four-bedroom home. An exterior door and door lock to the premises were damaged due to third-party vandalism, requiring repair in order to maintain a fit and habitable premises. The landlord repaired it but billed the tenants for the cost. The landlord refused to approve a sublease on the ground that the tenants refused to pay for the repairs and the penalties for nonpayment. At the conclusion of the lease, the landlord withheld the rental deposit.

One of the tenants, De Stefano, sued in small claims court, claiming that the landlord improperly withheld the rental deposit. The magistrate held for the tenant on most issues and awarded damages of $4720. The landlord appealed.

The district court concluded that under the terms of the lease, the landlord could charge the tenant for the replacement of the exterior door that had been vandalized by unknown persons. The district court also found the landlord properly refused to allow the proposed sublease in light of the tenant's refusal to pay for the exterior door. The district court found, however, that the landlord's automatic deduction from the rental deposit for carpet cleaning violated the Iowa Uniform Residential Landlord and Tenant Act and certain late fees were improper. The district court awarded De Stefano $651.54 for the balance of the deposit improperly withheld and $200 in statutory punitive damages. Both parties appealed. The Supreme Court of Iowa first found that when there is a statutory basis for awarding attorneys' fees they should be treated as costs and not as an amount in controversy under a small claims statute.

The Court also found that the IURLTA permits tenants to agree to make certain repairs, but does not authorize the landlord to make repairs and then shift the costs to the tenants.

The Court further found that the landlord did not act reasonably when it refused to allow the sublease of the premise when it attempted to enforce an unlawful provision in the lease.

In addition, the Court held that a landlord cannot impose an automatic carpet-cleaning fee and deduct such charges from a rental deposit.

However, the Court reversed the $200 penalty because, while the landlord used a lease provision that the Court

found illegal, there was no evidence of subjective dishonesty. The landlord did not make any misrepresentations to the tenant, but simply used a structure prohibited by the IURLTA.

The Court affirmed the district court in favor of the tenant on the issue of jurisdiction and cleaning costs, but reversed the decision of the district court adverse to the tenant on the issue of liability for the door repair and on the claim for damages for failure to permit the tenants from subleasing the apartment, and reversed the district court decision on punitive damages adverse to the landlord.

LEGISLATION

Arizona

Administrative hearings

2016 AZ S 1530. Enacted 5/10/2016. Effective 6/30/2016.

This bill adds Article 5, Mobile Home Parks Administrative Hearings, Ariz. Rev. Stat. Ann. §§ 41-4061 - 41-4065, to provide that, pursuant To Chapter 6, Article 10 of the title, an administrative law judge shall adjudicate complaints regarding and ensure compliance with the Arizona Mobile Home Parks Residential Landlord and Tenant Act.

The new section provides that a person that is subject to Title 33, Chapter 11 or a party to a rental agreement entered into pursuant to Title 33, Chapter 11 may petition the Department for a hearing concerning violations of the Arizona Mobile Home Parks Residential Landlord and Tenant Act by filing a petition with the Department and paying a nonrefundable filing fee in an amount to be established by the director.

The order issued by the administrative law judge is binding on the parties unless a rehearing is granted pursuant to section 41-4065.

The administrative law judge may hear and adjudicate all matters relating to the Arizona Mobile Home Parks Residential Landlord and Tenant Act and rules adopted pursuant to this article, except that the administrative law judge shall not hear matters pertaining to rental increases pursuant to section 33-1413, subsection g or i.

This section does not limit the jurisdiction of the courts of this state to hear and decide matters pursuant to the Arizona Mobile Home Parks Residential Landlord and Tenant Act.

LEGISLATION

Arizona

Removal

2016 AZ H 2259. Enacted 5/12/2016. Effective 8/6/2016.

The bill amends Ariz. Rev. Stat. Ann. § 33-1451, under the Arizona Mobile Home Parks Residential Landlord and Tenant Act, Article 3, Tenant Obligations, to provide that a person shall not enter a mobile home park and begin work on the removal of a mobile home from a mobile home park without first satisfying the requirements for a clearance for removal as prescribed in section 33-1485.01. A person who has not satisfied the requirements for a clearance for removal as prescribed in section 33-1485.01 and who refuses to leave and remove their removal equipment from the mobile home park on request from the landlord commits criminal trespass in the third degree pursuant to section 13-1502. This subsection does not apply if the landlord refuses to provide the clearance for removal if the requirements in section 33-1485.01 are satisfied.

The bill also amends Ariz. Rev. Stat. Ann. § 41-2186, under the Department of Fire, Building and Life Safety, to make it grounds for disciplinary action for a licensed manufacturer, dealer, broker, salesperson or installer licensed to commit any wrongful or fraudulent act in

conjunction with the sale, transfer or relocation of a mobile home in the state.

LEGISLATION
Arizona
Floodplain – Home replacement

2016 AZ H 2474. Enacted 5/1/7/2016. Effective 8/6/2016.

This bill amends Ariz. Rev. Stat. Ann. § 48-3609, Floodplain delineation; regulation of use; federal requirements and definitions, to allow mobile homes in a mobile home park or subdivision in a floodplain to be replaced by another mobile if the home sustained damage with certain conditions.

The bill provides that a city or town with a population of less than one thousand five hundred persons that is located in a county with a population of less than seventy thousand persons and that has assumed the powers and duties for floodplain management pursuant to section 48-3610, subsection a may adopt as a part of the regulations required by subsection b, paragraph 5 of this section a regulation that allows a mobile home that qualifies under this subsection to be replaced with a mobile home that either is elevated so that the bottom of the structural frame or the lowest point of any attached appliances, whichever is lower, is at or above the base flood elevation or has a chassis supported by reinforced piers or other foundation elements of equivalent strength that are not less than thirty-six inches in height above grade and that are securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement. A mobile home qualifies under this subsection if both of the following apply:

1. The mobile home was located in a mobile home park or subdivision on August 3, 1984 or before the effective date of the city's or town's initial floodplain management regulations, whichever date is earlier.

2. No mobile home that is located in that mobile home park or subdivision has been damaged by a flood to more than fifty percent of its value before the flood.

LEGISLATION
Arizona
Tree maintenance

2016 AZ H 2304. Enacted 5/17/2016. Effective as noted.

Effective 8/6/2016, this bill amends Ariz. Rev. Stat. Ann. § 33-1434 to provide that, for new tenants who are moving into a mobile home park, any rental agreements that are executed or adopted after December 31, 2016 shall specifically disclose in writing any requirement that the tenant maintain one or more existing trees located on the mobile home space.

Any change regarding the tenant's obligation to maintain any one or more trees located on the mobile home space constitutes a substantial modification of the rental agreement pursuant to section 33-1452.

Effective 5/30/2016, the bill amends Ariz. Rev. Stat. Ann. § 33-1452, Rules and regulations, to provide that beginning May 31, 2016, a new rule adopted after the execution of the tenant's initial rental agreement that imposes a reoccurring financial obligation on a tenant is not enforceable against the tenant.

LEGISLATION
Arizona
Additional person - Title

2016 AZ S 1362. Enacted 5/17/2016. Effective 8/6/2016.

This bill amends Ariz. Rev. Stat. Ann. § 33-1414 to provide that a rental agreement shall not provide that the tenant agrees to place any additional person's name on the title to the mobile home as a condition of tenancy or residency for that additional person or pay a fee or

other form of penalty for failing to place an additional person's name on the title to the mobile home.

Similarly, the bill amends Ariz. Rev. Stat. Ann. § 33-1452 to provide that a person who owns or operates a mobile home park shall not require a tenant to place any additional person's name on the title to the mobile home as a condition of tenancy or residency for that additional person or pay a fee or other form of penalty for failing to place an additional person's name on the title to the mobile home.

LEGISLATION

Connecticut

Security deposits

2016 CT H 5571. Enacted 5/26/2016. Effective 7/1/2016.

This bill amends Conn. Gen. Stat. § 47a-21, regarding Landlord/Tenant, to provide that "Accrued interest" means the interest due on a security deposit as provided in subsection (i) of this section, compounded annually to the extent applicable.

The bill provides that, in the case of a tenant under sixty-two years of age, a landlord shall not demand a security deposit in an amount that exceeds two months' rent.

Formerly the provision was that, in the case of a tenant under sixty-two years of age, a landlord shall not demand a security deposit in an amount or value in excess of two months' periodic rent which may be in addition to the current month's rent.

The bill makes a similar amendment to the provision re: tenants over sixty-two (and one month's rent).

The bill further provides that, not later than thirty days after termination of a tenancy or fifteen days after receiving written notification of such tenant's forwarding address, whichever is later (adding the reference to 15 days and tenant's forwarding address), each landlord other than a rent receiver shall deliver to the tenant or former tenant at such forwarding address either (A) the full amount of the security deposit paid by such tenant plus accrued interest, or (B) the balance of such security deposit and accrued interest after deduction for any damages suffered by such landlord by reason of such tenant's failure to comply with such tenant's obligations, together with a written statement itemizing the nature and amount of such damages. Any landlord who violates any provision of this subsection shall be liable for twice the amount of any security deposit paid by such tenant, except that, if the only violation (adding, only) is the failure to deliver the accrued interest, such landlord shall be liable for ten dollars or twice the amount (adding, ten dollars or) of the accrued interest, whichever is greater (adding, whichever is greater).

The bill provides that each landlord shall immediately deposit the entire amount of any security deposit received by such landlord from each tenant into one or more escrow accounts established or maintained in a financial institution for the benefit of each tenant. Each landlord shall maintain each such account as escrow agent and shall not withdrawal funds from such account except as provided below.

The bill also adds that the escrow agent may withdraw funds from an escrow account to: (A) disburse the amount of any security deposit and accrued interest due to a tenant pursuant to subsection (d) of this section; (B) disburse interest to a tenant pursuant to subsection (i) of this section; (C) make a transfer of the entire amount of certain security deposits pursuant to subdivision (3) of this subsection; (D) retain interest credited to the account in excess of the amount of interest payable to the tenant under subsection (i) of this section; (E) retain all or any part of a security deposit and accrued interest after termination of tenancy equal to the damages suffered by the landlord by reason of the tenant's failure to comply with such tenant's obligations; (F) disburse all or any part of the security deposit to a tenant at any time during tenancy; or (G) transfer such funds to another

financial institution or escrow account, provided such funds remain continuously in an escrow account.

The landlord shall provide each tenant with a written notice stating the amount held for the benefit of the tenant and the name and address of the financial institution at which the tenant's security deposit is being held not later than thirty days after the landlord receives a security deposit from the tenant or the tenant's previous landlord or transfers the security deposit to another financial institution or escrow account.

If the commissioner makes a written request to the landlord for any information related to a tenant's security deposit, including the name of each financial institution in which any escrow account is maintained and the account number of each escrow account, the landlord shall provide such information to the commissioner not later than seven days after the request is made.

The bill adds a new section, effective 7/1/2016, to provide that the Banking Commissioner shall determine the deposit index for each calendar year and publish such deposit index in the Department of Banking's news bulletin and on the department's Internet web site not later than December fifteenth of the prior year. The commissioner may also disseminate the deposit index and any information the commissioner deems appropriate in a manner designed to alert the parties that may rely on the deposit index, including the issuance of press releases and public service announcements, the encouragement of news stories in the mass media and the posting of conspicuous notices at financial institutions. For purposes of this section, "deposit index" means (1) the average of the national rates for savings deposits and money market deposits for the last week in November of the prior year, as published by the Federal Deposit Insurance Corporation in accordance with 12 CFR 337.6, as amended from time to time, or (2) if said corporation no longer publishes such rates, the average of substantially similar national rates for the last week in November of the prior year as published by a federal banking agency.

READOPTED EMERGENCY RULE

Louisiana

Plumbing systems

Effective 5/10/2016. Expires 9/7/2016.

This rule amends La. Admin. Code Title 17:I of the Department of Public Safety/State Uniform Construction Code Council, to provide for maintenance and installation of plumbing systems.

The rule adds La. Admin. Code tit. 17, § 1601 et seq., Travel Trailer and Mobile/Manufactured Home Parks to apply specifically to all new travel trailer and mobile/manufactured home parks, and to additions to existing parks, and are to provide minimum standards for sanitation and plumbing installation within these parks, for the accommodations, use and parking of travel trailers and/or mobile/manufactured homes.

The rule provides that travel trailers or mobile/manufactured homes shall not be parked in any park unless there are provided plumbing and sanitation facilities installed and maintained in conformity with the code. Every travel trailer and mobile/manufactured home shall provide a gastight and watertight connection for sewage disposal which shall be connected to an underground sewage collection system discharging into a community sewerage system, a commercial treatment facility, or an individual sewerage system which has been approved by the state health officer.

LEGISLATION

Oklahoma

Special liens

2015 OK S 796. Enacted 5/20/2016. Effective immediately.

This bill amends Okla. Stat. tit. 42, § 91 which includes provisions regarding special liens on personal property, including for furnishing rental space for a manufactured home that has a certificate of title issued by the Oklahoma Tax Commission.

The law provides that the special lien is be subordinate to any perfected security interest unless the claimant complies with the requirements of this section. Failure to comply with any requirements of this section shall result in denial of any title application and cause the special lien to be subordinate to any perfected lien. Upon such denial, the applicant shall be entitled to one resubmission of the title application within fifteen (15) business days of receipt of the denial, and proceed to comply with the requirements of this section.

The bill adds that, in the event of a denial, the Notice of Possessory Lien and the Notice of Sale may be mailed on the same day in separate envelopes and storage charges shall only be charged from the date of resubmission.

DEFAULT SERVICING

CASE LAW

Bankruptcy - Foreclosure

CASE NAME: *In re Beaumont*
DATE: *03/26/2016*
CITATION: *United States Bankruptcy Court, D. South Carolina. --- B.R. ----. 2016 WL 1212441*

South State Bank filed three motions for relief of stay as to mortgages on various parcels of real property and the mobile homes located thereon, as well as with respect to a security agreement on two other mobile homes.

The Court found that cause existed to grant South State Bank's Motions and lift the stay so that the pending state court litigation could proceed. The special referee had already granted summary judgment to South State Bank on foreclosure of its mortgages on Debtor's real property and on the claim and delivery of Debtor's mobile homes. Debtor indicated that he disputed the findings of the special referee; however, the Court could not review the judgment of a state court for correctness. Debtor could exercise whatever state court appeal rights he may have in connection with his defenses. No particular issues of bankruptcy law were involved in the parties' dispute regarding the underlying claims; as a result, the Court's expertise was not necessary. Debtor was only seeking a discharge of indebtedness, which would not extinguish any lien. Further, the special referee was familiar with the issues in the litigation, having entered summary judgment, while this Court was unfamiliar with the issues involved; thus, granting relief from stay would promote judicial economy. Finally, while Debtor would suffer little harm if the stay was lifted, since he had, and will have, the opportunity to contest South State Bank's claims in state court, South State Bank would suffer significant harm if the stay was not lifted and it was required to essentially start over in this Court.

South State Bank's Motions were granted. The automatic stay was lifted to allow South State Bank to proceed with its state law remedies with respect to its collateral outside the Bankruptcy Court.

CASE LAW

FDCPA – Time-barred debt

CASE NAME: *Filgueiras v. Portfolio Recovery Associates, LLC*
DATE: *04/25/2016*
CITATION: *United States District Court, D. New Jersey. Slip Copy. 2016 WL 1626958*

PRA mailed two collection letters to Plaintiff, the first on or about November 19, 2014, and the second on or about November 12, 2015. The 2014 Letter included three “Settlement Options” and stated that “the savings percentage will be applied to the balance and your account will be considered 'settled in full' once your final payment is successfully posted.” The 2015 Letter offered “Single Payment Savings” and stated that “your account

will be considered 'settled in full' after your payment is successfully posted." The 2015 further stated that "[b]ecause of the age of your debt, we will not sue you for it."

Plaintiff alleged that PRA violated the FDCPA by sending letters which attempted to settle time-barred debts without disclosing that the debts were time-barred, without disclosing that payment of the debt would restart the statute of limitations, and which falsely represented the benefits of the offers/options for payment.

The Court first noted that there was an issue of fact as to whether the debt was governed by a four-year or six-year statute of limitations. In essence, the distinction hinged on whether the Account was an installment contract for the sale of goods versus a loan of money.

Assuming at this stage that a four-year limitations period applied, the Court found that Plaintiff plausibly stated a claim for relief based on an alleged misrepresentation of the status of the debt in the 2014 Letter.

Although the Court found that the settlement offer contained in the 2014 Letter did not amount to a threat of litigation, the letter presented "Settlement Options" for sebt that was arguably time-barred. It was plausible that an unsophisticated consumer would believe a letter that offers to 'settle' a debt implies that the debt is legally enforceable.

In addition, nothing in the letter disclosed the legal consequences of a settlement or a payment—in particular that it would restart the statute of limitations, giving the creditor a new opportunity to sue for the full debt.

However, the 2015 Letter was not in violation of the FDCPA because even the least sophisticated debtor would not understand the 2015 Letter to threaten litigation, or to misrepresent the legal status of the Debt. In light of the explicit disclaimer acknowledging that the debt was time-barred, even the least-sophisticated debtor would not believe that the debt was legally enforceable.

The Court granted in part and denied in part the Motion to Dismiss.

Affirmed.

CASE LAW

SCRA - Foreclosure

CASE NAME: *Sibert v. Wells Fargo Bank, N.A.*
DATE: *05/04/2016*
CITATION: *United States District Court, E.D. Virginia, Richmond Division. --- F.Supp.3d ----. 2016 WL 2585931*

Sibert entered the United States Navy on July 9, 2004. On May 15, 2008, while on active duty, Sibert obtained a loan, secured by a Note and Deed of Trust, and purchased a residential property. Sibert was honorably discharged from the Navy on July 8, 2008.

In March 2009, eight months after Plaintiff's discharge, Wells Fargo instructed its trustee to commence foreclosure proceedings on Sibert's home. In April 2009, Sibert re-entered the service by joining the United States Army, and presently remains on active duty. A foreclosure sale was held on May 13, 2009.

Plaintiff filed suit on October 29, 2014, alleging that the foreclosure violated the Servicemembers' Civil Relief Act ("SCRA"), which prohibits foreclosure on a servicemember's property during a period of military service without a court order.

According to the Court, the protections of SCRA § 533(c) only apply if Plaintiff's mortgage originated before the period of his military service. Sibert argued that because his loan originated prior to his second period of service, he is entitled to the protections and remedies of the SCRA.

The Court found that because Sibert's mortgage originated while he was in the military, that obligation did not qualify under the SCRA.

According to the Court, this holding comports with the overall purpose of the SCRA, which was designed to ensure that servicemembers do not suffer financial or other disadvantages as a result of entering the service. The SCRA achieves this by shielding servicemembers whose income changes as a result of their being called to active duty, and who therefore can no longer keep up with obligations negotiated on the basis of prior levels of income. Such a change in income and lifestyle was not a factor in Sibert's case. Accordingly, he did not fall within the intended class of protected persons.

Wells Fargo's motion for summary judgment granted.

CASE LAW

Bankruptcy – Titling

CASE NAME: *In re Chesley*
DATE: *05/04/2016*
CITATION: *United States Bankruptcy Court, M.D. Florida, Tampa Division. Slip Copy. 2016 WL 2616747*

In this Chapter 7, the Trustee sought (1) a declaratory judgment that a 2002 Indian Scout motorcycle was property of the bankruptcy estate and (2) an order requiring Debtor to turn it over to her.

The Debtor contended that if Debtor was not the registered title holder on the petition date, the motorcycle did not become property of the bankruptcy estate and, therefore, the Court lacked jurisdiction to adjudicate the issue of ownership.

The Court found that registered title is not the sole determinant of ownership, and there is a distinction between beneficial ownership and marketable title of a motor vehicle. Based on undisputed facts, including Debtor's post-petition application for title stating that he purchased the motorcycle before the petition date, the Court concluded that the motorcycle became property of the bankruptcy estate. Accordingly, the Trustee's motion for summary judgment was granted and the Debtor must turn over the motorcycle to the Trustee.

CASE LAW

Bankruptcy – Value of collateral

CASE NAME: *In re Wilson*
DATE: *05/05/2016*
CITATION: *United States Bankruptcy Court, N.D. Ohio, Eastern Division. Slip Copy. 2016 WL 2717648*

In this Chapter 13, the parties stipulated to the accuracy of the proof of claim of the first mortgage, which totaled $63,910.84. The Court found that, if the value of the property was greater than $63,910.84 then the second mortgage had a secured component and could not be modified.

According to the Court, the Debtor's appraisal was correct in noting that the Real Property needed significant repairs. However, a large portion of his valuation was based on a misunderstanding of the HUD guidelines for manufactured homes. The foundation must be load bearing but the barrier wall need not be. The Debtor's appraisal report included numerous pictures of the Real Property including pictures of a plywood wall covering the crawl space. The Court found that a continuous plywood wall enclosing the crawl space satisfies the HUD guidelines, and was not a reason to discount the value of the property.

On the other hand, the Court found that the creditor's use of comparable properties that were not in the same condition as the Real Property resulted in this valuation being too high.

The Court found that the debtor's appraisal was the more credible of the two valuations, but could not include the additional approximately $10,000 he

discounted due to the lack of a continuous perimeter wall.

The Court found the value of Debtor's Real Property to be $70,840.00. Because the value of the Real Property was greater than the claim for the first mortgage CitiFinancial Servicing's second mortgage lien was secured in part and could not be avoided. Accordingly, Debtor's motion to avoid lien was denied.

CASE LAW

FDCPA – Time-barred debt

CASE NAME: *Magee v. Portfolio Recovery Associates, LLC*
DATE: *05/09/2016*
CITATION: *United States District Court, N.D. Illinois, Eastern Division. Slip Copy. 2016 WL 2644763*

Plaintiffs alleged that PRA violated the FDCPA by sending consumers collection letters that contained settlement offers on time-barred debts without disclosure of the fact that the debt was time barred. Plaintiffs further alleged that the nondisclosure in conjunction with the offers of a 'settlement' implied a colorable obligation to pay and was misleading to the consumer. Magee further alleged that PRA violated the FDCPA by referring to credit reporting on debts so old that they could not be reported on an ordinary credit report.

The Court found that by failing to include language that the law limits how long consumers can be sued on their debt, the statements in question urge them to make payments on time-barred debt without informing them of the consequences of making those payments, i.e. a gullible consumer who made a partial payment would inadvertently have reset the limitations period and made herself vulnerable on the full amount. Such language could influence a consumer's decision, and is material.

In addition, the Court found that misleading a consumer to believe a debt is legally reportable and that making a payment on that debt will improve his or her credit score is a deception that has the ability to influence that consumer's decision. Therefore, the statements regarding "credit reporting" were misleading on their face and materially false,

Plaintiffs' Motion for Summary Judgment granted.

CASE LAW

FDCPA – Validation notice

CASE NAME: *Montgomery v. Trident Asset Mgmt., L.L.C.*
DATE: *01/12/2016*
CITATION: *Civil Action No. 15-6617 (MAS) (LHG), United States District Court, D.N.J., 2016 U.S. Dist. LEXIS 62672*

Leah Montgomery brought a putative class action asserting that Defendant violated the FDCPA by sending two collection notices to Plaintiff approximately eleven days apart, both of which contained a thirty day validation notice. Plaintiff claimed that Defendant overshadowed the validation notice contained in the first collection letter by mailing a second validation notice regarding the same debt within eleven days of the first letter.

The Court found that the two letters created no reasonable possibility of confusion in derogation of the debtor's rights, noting that nothing in the FDCPA prohibits a debt collector from giving a debtor more than the requisite 30-day validation period. Accordingly, Defendant's motion for judgment on the pleadings was granted.

CASE LAW

RESPA – Notice of error

CASE NAME: *Renfroe v. Nationstar Mortg., LLC*
DATE: *05/12/2016*
CITATION: *United States Court of Appeals, Eleventh Circuit. --- F.3d ----. 2016 WL 2754461*

Refroe alleged that after her mortgage loan was transferred to Nationstar for servicing, her monthly payments increased by about $100. She refinanced, ending Nationstar's servicing of the loan.

Renfroe sent Nationstar a letter requesting an investigation, a "detailed explanation," certain account information, and a refund if appropriate. This "notice of error" letter triggered certain rights under RESPA. Nationstar denied any error, but gave no explanation. Renfroe filed suit.

The Magistrate Judge recommended granting Nationstar's motion to dismiss, reasoning that Nationstar complied with RESPA because it explained that related documents were reviewed. The judge stated that Renfroe had not pleaded damages under RESPA because the overpayments occurred before Mrs. Renfroe wrote to Nationstar, and any such damages "sound in breach of contract ... and not in a RESPA violation." The Magistrate Judge stated that no statutory "pattern or practice" damages could accrue without actual damages.

The District Court adopted the report and dismissed the complaint. Renfroe appealed.

The appeals court found that Renfroe plausibly alleged: (1) that Nationstar did not offer a written explanation stating the reason or reasons for its determination; (2) that this failure indicated Nationstar's investigation was unreasonable; and (3) that Nationstar's unreasonable investigation prevented it from discovering and appropriately correcting the account error. Therefore, Renfroe stated a RESPA violation.

The Court also concluded that Renfroe sufficiently pleaded damages by alleging that Nationstar's failure to discover and refund her overpayments resulted in actual damage to her. The Court held that, if RESPA reached only future harm, a servicer notified of an account error could avoid RESPA liability just by claiming it thought there was no error and correcting the error going forward.

The Court further found that Renfroe plausibly alleged a pattern or practice of noncompliance with the requirements of RESPA by alleging that: (1) "Nationstar's practice is to provide ... readily available documents in response to a [notice of error], regardless of the individual requests made"; (2) "[Nationstar's] practice is to use the standardize[d] form-based response letter, like the one used to respond to Renfroe's request, which contains boilerplate objections that are not tailored to the ... individual request"; (3) "On at least five separate occasions, including Mrs. Renfroe's case, Nationstar has used the same generic form letters to respond to [notices of error]. These form letter[s] were sent [to] borrowers in Birmingham, Alabama; Mobile[,] Alabama[;] and Lexington, Maryland. In each situation, Nationstar's form and generic response failed to address the specific issues addressed in the borrower's letter and violated RESPA Section 2605(e)"; and (4) Nationstar's patently incorrect statement that Mrs. Renfroe's loan would continue to be serviced showed that a form letter was used.

According to the Court, disclosing the identities of other borrowers, the dates of the letters, and the specifics of their inquiries was not a prerequisite to pleading statutory damages.

Reversed and remanded.

CASE LAW

FDCPA – Suit without trial

CASE NAME: *St. John v. Cach, LLC*
DATE: *05/19/2016*
CITATION: *United States Court of Appeals, Seventh Circuit. --- F.3d ----. 2016 WL 2909195*

The defendants were debt collectors who previously filed suit in Illinois state court to recover on the plaintiffs' delinquent credit card accounts. The debt collectors later moved to voluntarily dismiss the actions without prejudice prior to trial. The plaintiffs then sued the debt collectors for allegedly engaging in deceptive practices under the FDCPA by initiating the state court proceedings with no intention of going to trial. Each of the plaintiffs' federal actions was dismissed for failure to state a plausible claim to relief. Plaintiffs appealed.

The appeals court noted that the plaintiffs did not allege that the defendants represented anywhere in their state court complaints that they intended to go to trial; rather, they alleged that the defendants implicitly communicated an intention to go to trial simply by filing the complaints. Nor was there any indication that the defendants did not file the complaints in good faith, since the plaintiffs did not deny that they owed the debts sued upon or otherwise contend that the debts were not legally enforceable.

The Court found that the plaintiffs did not sufficiently allege that the defendants did not intend to proceed to trial when they initially filed their collection complaints in state court.

The plaintiffs also failed to show that the defendants ever threatened to go to trial at all. The mere filing of a civil action does not include an implicit declaration that the plaintiff intends to advance the action all the way through trial. That is not “trickery;” it is the legitimate exercise of the plaintiff's discretion in determining how to efficiently manage litigation by obtaining an optimal outcome with limited resources.

Moreover, under Illinois law the debt collectors in this case were allowed to voluntarily dismiss their actions at any time before trial, for any reason. 735 ILCS 5/2–1009(a).

The Court therefore held that the FDCPA does not prohibit debt collectors from filing a collection lawsuit without intending to go to trial. Accordingly, the plaintiffs failed to state a plausible claim, even if the defendants did not intend to go to trial when they filed their collection complaints.

Affirmed.

CASE LAW

FDCPA – Proof of claim

CASE NAME: *Johnson v. Midland Funding*
DATE: *05/24/2016*
CITATION: *No. 15-11240, No. 15-14116, United States Court of Appeals for the Eleventh Circuit, 2016 U.S. App. LEXIS 9478*

Johnson and Brock (together, "Debtors") sued their respective creditors (together, "Claimants") under the FDCPA, alleging that the claims on their face were barred by the relevant statute of limitations. They argued that the proofs of claim were thus "'unfair,' 'unconscionable,' 'deceptive,' and misleading" in violation of the FDCPA.

The District Court read the Bankruptcy Code as affirmatively authorizing a creditor to file a proof of claim—including one that is time-barred—if that creditor has a "right to payment" that has not been extinguished under applicable state law and a creditor's right to file a time-barred claim under the Code precluded debtors from challenging that practice as a violation of the FDCPA in the Chapter 13 bankruptcy context.

After the Claimants motions to dismiss were granted, the two cases were consolidated for appeal.

The appeals court first noted that it faced a nearly identical case in *Crawford v. LVNV Funding, LLC, 758 F.3d 1254, 1261 (11th Cir. 2014)* (in the July 2014 McGlinchey Stafford Manufactured Housing Law Update), where the Court held that the practice of filing time-barred proofs of claim was misleading under the FDCPA. The Court, however, did not address the question of whether the Bankruptcy Code "'preempts' the FDCPA when creditors misbehave in bankruptcy."

Here, the Court found that the Bankruptcy Code does not preclude an FDCPA claim in the context of a Chapter 13 bankruptcy when a debt collector files a proof of claim it knows to be time-barred.

The Court recognized that the Code allows creditors to file proofs of claim that appear on their face to be barred by the statute of limitations. However, when a "debt collector" under the FDCPA files a knowingly time-barred proof of claim in a debtor's Chapter 13 bankruptcy, that debt collector will be vulnerable to a claim under the FDCPA.

The Court concluded that the FDCPA and the Code can coexist. The Bankruptcy Code's rules about who can file claims do not shield debt collectors from the obligations that Congress imposed on them. If a debt collector chooses to file a time-barred claim, he is simply opening himself up to a potential lawsuit for an FDCPA violation. This result is comparable to a party choosing to file a frivolous lawsuit. There is nothing to stop the filing, but afterwards the filer may face sanctions.

Reversed and remanded.

CASE LAW

RESPA – "Borrower"

CASE NAME: *Frank v. J.P. Morgan Chase Bank, N.A.*
DATE: *05/31/2016*
CITATION: *United States District Court, N.D. California, San Francisco Division. Slip Copy. 2016 WL 3055901*

Mary and Joe Frank, husband and wife, mortgaged their home. Both signed the Deed of Trust but only Joe signed the Promissory Note. The defendant acquired and serviced the loan until November 2013, when it transferred loan-servicing responsibilities to M&T Bank.

Joe Frank died in September 2011. Before he died, the Franks submitted a loan modification application with Chase. Chase did not respond before his death.

After her husband's death, Ms. Frank took steps to assume the loan, but Chase refused to communicate with her because she was not the borrower. Despite communications from Ms. Frank's attorney, Chase recorded a Notice of Default in September 2013.

Ms. Frank sued, alleging: 1) breach of the implied covenant of good faith and fair dealing; 2) violation of RESPA; 3) violation of California's Unfair Competition Law; and 4) negligence. Chase moved to dismiss, asserting lack of standing and failure to state a claim. Ms. Frank subsequently abandoned her good faith and fair dealing claim.

The Court found that, where Ms. Frank was a "Borrower" under the Deed of Trust and a surviving spouse obligated to make debt payments, she was a "borrower" for the purposes of RESPA (and her other claims), and therefore had standing.

The Court also found that, although Chase "responded" to Ms. Frank's qualified written request, it did not provide any argument that its response was sufficient in light of RESPA requirements.

The Court also found that Ms. Frank, having alleged that her loan balance was higher now than it would have been had she received the RESPA information, had standing under the UCL. She also alleged sufficient facts to state a claim under the UCL's unlawful and unfair prongs, but not the law's fraudulent prong.

The Court also noted that, with respect to the negligence claim, Chase moved to dismiss only on the basis that it did not owe Ms. Frank a duty of care. The Court found that the loan assumption and modification was intended to affect Ms. Frank because it would have resulted in her assuming, modifying, and curing the loan default. She raised the plausible inference that Chase knew she lived at the home (and not Mr. Frank). Second, the harm of mishandling the applications was foreseeable because it would prevent Ms. Frank from taking over the loan, curing the default, and preventing further penalties. It was also foreseeable that she would suffer emotional damage at the risk of losing her family home. Third, the injury was certain to occur because additional penalties would accrue and capitalize while the loan was in default. Fourth, the connection between Chase's alleged misconduct and the injury suffered was close. Fifth, Chase's conduct would subject it to moral blame if it did in fact act wrongfully. And sixth, requiring a duty in this context would help prevent future harm.

The court denied Chase's motion with respect to Ms. Frank's claims under RESPA, the UCL's unlawful and unfair prongs, and common-law negligence. The court granted Chase's motion with respect to her claim under the UCL's fraudulent claim, which it dismissed without prejudice.

LEGISLATION

Arizona

Judgment lien

2016 AZ H 2555. Enacted 5/11/2016. Effective 8/6/2016.

This bill amends Ariz. Rev. Stat. Ann. §§ 33-961 and 33-967 to provide that failure to submit a certified copy of the judgment under the former section and an information statement under the latter results in the judgment not becoming a lien.

LEGISLATION

Connecticut

Servicers – Sales Finance Companies

2016 CT H 5571. Enacted 5/26/2016. Effective as noted.

Effective 7/1/2016, this bill amends Conn. Gen. Stat. § 36a-716, to provide that any mortgage servicer who receives funds from a mortgagor to be held in escrow for payment of taxes and insurance premiums shall:

(1) Keep records that (A) reflect the mortgage servicer's handling of each mortgagor's escrow account, which may involve electronic storage, microfiche storage or any method of computerized storage of information, provided the information is readily retrievable, and (B) shall include, but need not be limited to, the payment of amounts into and from the escrow account and the submission of initial and annual escrow account statements to the mortgagor in accordance with subsections (g) and (i) of 12 CFR 1024.17. Such records shall be maintained for each such account for a period of at least five years after the mortgage servicer last serviced the escrow account.

The bill also provides that whenever a mortgage servicer licensee receives funds from a mortgagor to be held in escrow for the payment of taxes and insurance, the mortgage servicer licensee shall deposit or invest such funds in one or more segregated deposit or trust accounts maintained at a federally insured bank, Connecticut credit union, federal credit union or out-of-state bank, which account or accounts shall be reconciled monthly. Such reconciliation may be evidenced by a monthly account statement or statements furnished by

the depository institution, provided (1) such account or accounts shall be maintained with the depository institution in a manner that reasonably reflects the fact that the funds held therein are being maintained for escrow purposes, (2) such funds shall not be commingled with funds belonging to the mortgage servicer licensee and may not be used to pay business operating expenses of the mortgage servicer licensee, and (3) the mortgage servicer licensee shall adopt, implement and maintain internal accounting controls that are reasonably designed to ensure compliance with this section. For purposes of this subsection, "mortgage servicer licensee" means a person who is licensed pursuant to section 36a-719 or exempt from licensure pursuant to subdivision (4) or (5) of subsection (b) of section 36a-718.

Effective 10/1/2016, the bill amends Conn. Gen. Stat. § 36a-773, relative to retail sellers or sales finance companies, to provide that, in the event of repossession of goods under section 36a-785, as amended by this act, where the holder of the retail installment contract has received a refund of all or part of the unearned insurance premiums paid by the retail buyer in connection with the retail installment contract, the holder shall apply such amount toward the balance of the retail buyer's obligations under the retail installment contract. For purposes of this section, "unearned insurance premiums" means the premiums that are collected by an insurer in advance, but subject to return if the coverage under the insurance contract or contracts ends before the term covered by the premiums is complete.

Also effective 10/1/2016, the bill adds a new subsection to provide a sales finance company, as defined in section 36a-535 of the general statutes, shall acquire and maintain adequate records in the form and manner as the commissioner shall direct in each retail installment contract acquired by purchase, discount, pledge, loan, advance or otherwise, and any application for a retail installment contract, covering the retail sale of a motor vehicle in the state that has been reviewed by the sales finance company or relates to a retail installment contract acquired by the sales finance company, including, but not limited, the: (1) Name, address, income and credit score of the applicant and any coapplicants and, if known, the ethnicity, race and sex of such individuals; (2) type, amount and annual percentage rate of the loan; and (3) disposition of the application. Such records shall be made available to the Banking Commissioner not later than five business days after a request for such records by the commissioner. Each sales finance company shall retain such records for not less than two years after the date of the application for applications that were denied or, for any retail installment contract that was acquired, for not less than two years after the date of final payment or sale or assignment of such contract, whichever occurs first, or such longer period as may be required by any other provision of law. On or before January 30, 2017, each licensee shall provide to the commissioner the records collected between October 1, 2016, to December 31, 2016, inclusive.

Also effective 10/1/2016, Conn. Gen. Stat. § 36a-778 has been amended to provide that the holder of any retail installment contract or any installment loan contract shall not receive or collect any charges or expenses for collecting any delinquent payment, including, but not limited to, any service fees for accepting delinquent payments over the telephone or Internet, with certain, specified exceptions.

Effective 10/1/2016, the bill amends Conn. Gen. Stat. § 36a-785 to provide that when the holder of a contract retakes possession of goods, the notice of intention to retake the goods, the notice shall designate (1) the obligations required to be performed in order to cure the default, including the dollar amount of any required payment, and (2) the date by which such obligations must be performed.

The bill provides that proceeds of the resale shall be applied in the following order of priority: (1) first, to the payment of the actual and reasonable expenses of such

resale, (2) if, after application pursuant to subdivision (1) of this subsection, there are proceeds remaining, then to the payment of the actual and reasonable expenses of any retaking and storing of said goods, and (3) if, after application pursuant to subdivisions (1) and (2) of this subsection, there are proceeds remaining, then to the satisfaction of the balance due under the contract.

The bill also provides that, if the goods retaken consist of a motor vehicle the aggregate cash price of which was more than four thousand dollars (formerly, $2,000), the prima facie fair market value of such motor vehicle shall be calculated by adding together the average trade-in value for such motor vehicle and the highest-stated retail value (formerly, the average retail value) for such motor vehicle and dividing the sum of such values by two. If an average trade-in value is not stated in the National Automobile Dealers Association Used Car Guide, Eastern Edition, as of the date of repossession, the highest-stated trade-in value stated in said guide for the motor vehicle shall be used.

LEGISLATION
Delaware
Bankruptcy – Equity exemption

2015 DE S 32. Enacted 5/19/2016. Effective immediately.

This bill makes a technical amendment to Del. Code Ann. tit. 10, § 4914 to remove the time limitation applicable to exemptions in federal bankruptcy and state insolvency proceedings for real property and manufactured homes.

The statute provides an exemption for equity in real property or equity in a manufactured home (as defined in Chapter 70 of Title 25) which constitutes a debtor's principal residence in an aggregate amount not to exceed $75,000 in 2010, $100,000 in 2011, and $125,000 thereafter (formerly, in 2012).

LEGISLATION
Maryland
Debt buyers

2016 MD S 771. Enacted 5/19/2016. Effective 10/1/2016.

This bill adds Md. Code Ann., Cts & Jud. Proc. §§ 5-1201 through 5-1204, to be under the new subtitle, "Subtitle 12. Consumer Debt Collection Actions."

The bill defines terms, including:

"Collector" means a person collecting or attempting to collect an alleged debt arising out of a consumer transaction.

"Consumer debt" means a secured or an unsecured debt that:

(1) is for money owed or alleged to be owed; and

(2) arises from a consumer transaction.

"Consumer debt collection action" means any judicial action or arbitration proceeding in which a claim is asserted to collect a consumer debt.

"Consumer debt collection action" does not include an action brought under § 8-401 of the real property article by a landlord or an attorney, a property manager, or an agent on behalf of a landlord.

"Consumer transaction" means any transaction involving a person seeking or acquiring real or personal property, services, money, or credit for personal, family, or household purposes. "Creditor" means a person to whom a consumer debt is owed or alleged to be owed.

"Debt buyer" means a person that purchases or otherwise acquires consumer debt from an original creditor or from a subsequent owner of the debt.

"Debt buyer" does not include a:

(i) a check services company that acquires the right to collect on a paper or an electronic check instrument,

including an automated clearing house item that has been returned unpaid to a merchant;

(ii) a business entity that, in the business entity's ordinary course of business, does not purchase or otherwise acquire consumer debt from an original creditor or from a subsequent owner of the debt and acquired the consumer debt:

1. As a direct result of the business entity being the successor in a merger with the original creditor of the debt; or

2. Because the business entity purchased or otherwise acquired the original creditor in whole;

(iii) a bank, credit union, or savings and loan association that acquired the consumer debt as a direct result of being the successor in a merger with another bank, credit union, or savings and loan association that had owned the consumer debt;

(iv) a mortgage servicer that is licensed under title 11, subtitle 5 of the financial institutions article, unless the mortgage servicer or a collector acting on the mortgage servicer's behalf collects or attempts to collect a deficiency balance or deficiency judgment in any way related to or arising from a foreclosure or short sale of real property that secured the mortgage loan;

(v) a sales finance company or any other person that acquires consumer debt arising from a retail installment sale agreement if:

1. The sales finance company or other person acquired the debt before the first installment payment was due from the consumer; and

2. The retail installment sale agreement expressly stated that the consumer would be required to make the consumer's payments to that sales finance company or person;

(vi) a bank, credit union, or savings and loan association that acquired from another bank, credit union, or savings and loan association, in the ordinary course of business, all of a specific type of consumer debt owned by the other bank, credit union, or savings and loan association except for consumer debt that had been charged off; or

(vii) an attorney, a licensed debt collection agency, a property manager, or any other person that collects or attempts to collect consumer debt in an action under § 8-401 of the real property article on behalf of an original creditor that is a residential rental property owner.

Provides that a creditor or a collector may not initiate a consumer debt collection action after the expiration of the statute of limitations applicable to the consumer debt collection action.

Notwithstanding any other provision of law, on the expiration of the statute of limitations applicable to the consumer debt collection action, any subsequent payment toward, written or oral affirmation of, or any other activity on the debt may not revive or extend the limitations period.

The bill provides that a debt buyer or a collector acting on behalf of a debt buyer may not initiate a consumer debt collection action unless the debt buyer or collector possesses all documents, as specified.

INSTALLATION

CASE LAW

Zoning – Agricultural exemption

CASE NAME: *Shalersville Twp. Bd. of Trustees v. Hawkins*
DATE: *05/02/2016*
CITATION: *Court of Appeals of Ohio, Eleventh District, Portage County. Slip Copy. 2016 WL 1734943*

Kevin W. and Teresa J. Hawkins added a mobile home to their property for Teresa's grandmother to live. The mobile home was placed on a concrete slab that Kevin poured near the main residence, and it was connected to electricity, water, and propane gas. In addition, the

majority of their grandmother's personal property was moved to the mobile home.

The zoning inspector told Kevin, pursuant to the township zoning code, only one residential structure can be maintained on a parcel of land, and that the mobile home was a second residence. After several extensions, Kevin and Teresa argued that the mobile home was exempt from township zoning because it was now being used for agricultural purposes.

The magistrate found that appellants' primary use of the mobile home was not agricultural, and that their use of the trailer was not directly and immediately related to any agricultural use of the property. The magistrate ultimately held the township was entitled to a permanent injunction barring appellants from maintaining it on their property. The Hawkinses appealed.

The appeals court found that after the grandmother moved into the main residence on the property, appellants removed some of the furniture from the mobile home's two bedrooms and two chicken cages were placed in one bedroom.

However, although some of the grandmother's personal belongings were moved into the main residence, a considerable amount of those belongings remained in the mobile home. In fact, two entire rooms, the living room and kitchen, basically stayed in the same condition they were when she resided there. Furthermore, Kevin told the zoning board that the grandmother might pass away if she lost the ability to look at her keepsakes in the mobile home.

Moreover, the evidence indisputably showed that appellants did not begin to put the chicken cages and the baby chicks into the mobile home until after appellee brought the underlying case to have the structure removed from the property.

Affirmed.

LEGISLATION

Arizona

Installation supervision

2016 AZ S 1530. Enacted 5/10/2016. Effective 6/30/2016.

This bill amends the definition of “director” in Ariz. Rev. Stat. Ann. § 33-1409 to mean the director of the Arizona Department of Housing (formerly, the Department Of Fire, Building and Life Safety), with conforming amendments elsewhere, including the definition in Ariz. Rev. Stat. Ann. § 41-4001.

The bill also amends Ariz. Rev. Stat. Ann. § 41-4001 (formerly, § 41-2142) by deleting the definition of “installation supervision."

The bill adds the definition of "Office" as the Office of Manufactured Housing within the Department.

ADOPTED RULE

Wisconsin

Compliance/non-compliance – Electronic notices

Effective 6/1/2016, this rule amends Wis. Admin. Code SPS 320.10 (4) (a) 1. and 2. relating to electronic notification.

Currently, provisions in ch. SPS 320 require building inspectors to post notices of compliance or non-compliance with the Uniform Dwelling Code at the job site and to notify the applicant for a building permit for the construction or installation of a dwelling and the owner, in writing, of violations to be corrected. These revisions allow the building inspectors to deliver these notices electronically if mutually agreed upon by the applicant and inspector.

LENDING

CASE LAW

Home equity loan – Forfeiture

CASE NAME: *Garofolo v. Ocwen Loan Servicing*
DATE: *05/20/2016*
CITATION: *NO. 15-0437, Supreme Court of Texas, 2016 Tex. LEXIS 391*

Teresa Garofolo took out a home-equity loan, made timely monthly payments and paid off the loan on April 1, 2014, at which time Ocwen had become the note's holder. A release of lien was recorded but Garofolo did not receive a release of lien in recordable form as required by her loan's terms. Garofolo notified Ocwen she had not received the document. Upon passage of 60 days following that notification, and still without the release, Garofolo sued Ocwen in federal district court for violating home-equity lending provisions of the Texas Constitution and breach of contract. For both claims, Garofolo sought Ocwen's forfeiture of all principal and interest she paid on the loan.

Both the release-of-lien and forfeiture provisions of Garofolo's loan are among the terms and conditions the Texas Constitution requires of foreclosure-eligible home-equity loans. Garofolo therefore argued that Ocwen's failure to deliver the release of lien amounted to a constitutional violation for which a constitutional forfeiture remedy was appropriate. And because the release-of-lien and forfeiture provisions were incorporated into Garofolo's loan, she alternatively argued forfeiture was a remedy available through her breach-of-contract action. Because her constitutional claim "raises an important issue of Texas constitutional law as to which there is no controlling Texas Supreme Court authority, and the authority from the intermediate state appellate courts provides insufficient guidance," the Texas Supreme Court accepted the following two certified questions from the Fifth Circuit:

1) Does Ocwen's failure to deliver a release of lien amount to a constitutional violation for which a constitutional forfeiture remedy applies?

2) Can Garofolo seek forfeiture through her breach-of-contract claim absent actual damages?

The Court found that the terms and conditions required to be included in a foreclosure-eligible home-equity loan are not substantive constitutional rights, nor does a constitutional forfeiture remedy exist to enforce them. The constitution guarantees freedom from forced sale of a homestead to satisfy the debt on a home-equity loan that does not include the required terms and provisions—nothing more. Ocwen therefore did not violate the constitution through its post-origination failure to deliver a release of lien to Garofolo. A borrower may seek forfeiture through a breach-of-contract claim when the constitutional forfeiture provision is incorporated into the terms of a home-equity loan, but forfeiture is available only if one of the six specific constitutional corrective measures would actually correct the lender's failure to comply with its obligations under the terms of the loan, and the lender nonetheless fails to timely perform the corrective measure following proper notice from the borrower. If performance of none of the corrective measures would actually correct the underlying deficiency, forfeiture is unavailable to remedy a lender's failure to comply with the loan obligation at issue. Accordingly, the Court answered "no" to both certified questions.

LEGISLATION

Colorado

At-risk adults - Reporting

2016 CO H 1394. Enacted 5/18/2016. Effective 7/1/2016.

This bill amends Colo. Rev. Stat. § 18-6.5-108 to provide that a person specified below who observes the

mistreatment of an at-risk elder or an at-risk adult with an intellectual and developmental disability (IDD), or who has reasonable cause to believe that an at-risk elder or an at-risk adult with IDD has been mistreated or is at imminent risk of mistreatment, shall report such fact to a law enforcement agency not more than twenty-four hours after making the observation or discovery:

(a) personnel of banks, savings and loan associations, credit unions, and other lending or financial institutions who directly observe in person the mistreatment of an at-risk elder or who have reasonable cause to believe that an at-risk elder has been mistreated or is at imminent risk of mistreatment; and

(b) personnel of banks, savings and loan associations, credit unions, and other lending or financial institutions who directly observe in person the mistreatment of an at-risk adult with IDD or who have reasonable cause to believe that an at-risk adult with IDD has been mistreated or is at imminent risk of mistreatment by reason of actual knowledge of facts or circumstances indicating the mistreatment.

The bill also amends Colo. Rev. Stat. § 26-3.1-102 to urge persons working in financial services industries, including banks, savings and loan associations, credit unions, and other lending or financial institutions; accountants; mortgage brokers; life insurance agents; and financial planners, who observe the mistreatment or self-neglect of an at-risk adult or who has reasonable cause to believe that an at-risk adult has been mistreated or is self-neglecting and is at imminent risk of mistreatment or self-neglect to report such fact to a county department not more than twenty-four hours after making the observation or discovery.

LICENSING

LEGISLATION

Connecticut

Small loans

☹

2016 CT H 5571. Enacted 5/26/2016. Effective 7/1/2016.

This bill amends Conn. Gen. Stat. §§ 36a-555 to 36a-573, regarding Small Loan licensing and lending.

The bill provides that:

(a) Without having first obtained a small loan license from the commissioner pursuant to section 36a-565, as amended by this act, no person shall, by any method, including, but not limited to, mail, telephone, Internet or other electronic means, unless exempt pursuant to section 36a-557, as amended by this act:

(1) Make a small loan to a Connecticut borrower;

(2) Offer, solicit, broker, directly or indirectly arrange, place or find a small loan for a prospective Connecticut borrower;

(3) Engage in any other activity intended to assist a prospective Connecticut borrower in obtaining a small loan, including, but not limited to, generating leads;

(4) Receive payments of principal and interest in connection with a small loan made to a Connecticut borrower;

(5) Purchase, acquire or receive assignment of a small loan made to a Connecticut borrower; and

(6) Advertise or cause to be advertised in this state a small loan or any of the services described in subdivisions (1) to (5), inclusive, of this subsection.

(b) No person shall accept any lead, referral or application for a small loan to a prospective Connecticut borrower from a person who is not (1) licensed pursuant to section 36a-565, as amended by this act, or (2) exempt

from licensure pursuant to section 36a-557, as amended by this act.

(c) No person shall sell, transfer, pledge, assign or otherwise dispose of any small loan made to a Connecticut borrower to any person who is not (1) licensed pursuant to section 36a-565, as amended by this act, or (2) exempt from licensure pursuant to section 36a-557, as amended by this act.

The following persons are exempt from the requirement for licensure set forth in section 36a-556, as amended by this act:

(1) A licensed pawnbroker;

(2) A person licensed as a consumer collection agency in accordance with section 36a-801, as amended by this act, when engaged in the activities of a consumer collection agency in the normal course of business;

(3) A person who services small loans for an exempt person described in subsection (b) of this section, when such exempt person owns the small loans, provided the servicing arrangements include, in addition to receiving payments of principal and interest in connection with the small loans, the provision of accounting, recordkeeping and data processing services;

(4) A person who is a passive buyer of a small loan. For purposes of this subdivision, "passive buyer" means a person who: (A) Has acquired a small loan for investment purposes from a person who is either licensed or exempt from licensure under subdivisions (1) to (3), inclusive, of this subsection; (B) will receive the principal and interest and any other moneys due under the small loan through a person who is either licensed or exempt from licensure under subdivisions (1) to (3), inclusive, of this subsection; and (C) has had and will have no communications of any kind with the Connecticut borrower regarding the small loan it has acquired;

(5) A consumer reporting agency, as defined in Section 603(f) of the Fair Credit Reporting Act, 15 USC 1681a, as amended from time to time, when generating leads; and

(6) A retail seller who offers, extends or facilitates credit through an open-end or closed-end credit plan for the purchase of goods or services from such retail seller.

The following persons are exempt from the provisions of sections 36a-555 to 36a-573, inclusive, as amended by this act:

(1) Any bank, out-of-state bank, Connecticut credit union, federal credit union or out-of-state credit union, provided such bank or credit union is federally insured;

(2) Any wholly-owned subsidiary of such bank or credit union; and

(3) Any operating subsidiary where each owner of such operating subsidiary is wholly owned by the same bank or credit union.

LEGISLATION

Delaware

Location licensing - Posting

☹

2015 DE H 286. Enacted 5/9/2016. Effective immediately.

This bill amends Del. Code Ann. tit. 5, §2106 to remove the requirement that a Mortgage Broker licensee post its license.

The bill amends Del. Code Ann. tit. 5, §2206 to require a license for each location of a Licensed Lender.

The bill deletes the requirement that the license be posted.

Del. Code Ann. tit. 5, §2902 has been amended to remove the requirement that an application for a Sales Finance license be made under oath.

The bill requires a license for each location of a Sales Finance licensee and removes the requirement that a license be posted.

MANUFACTURING

NOTICE OF PROPOSED RULEMAKING
Department of Energy
Energy conservation standards

Issued 5/20/2016.

The U.S. Department of Energy (DOE) proposes to amend chapter II of title 10 of the Code of Federal Regulations by adding a new Part 460 as set forth below:

PART 460 – ENERGY CONSERVATION STANDARDS FOR MANUFACTURED HOMES

Subpart A – General

460.1 Scope.

460.2 Definitions.

460.3 Incorporation by reference.

Subpart B – Building Thermal Envelope

460.101 Climate zones.

460.102 Building thermal envelope requirements.

460.103 Installation of insulation.

460.104 Building thermal envelope air leakage.

Subpart C – HVAC, Service Water Heating, and Equipment Sizing

460.201 Duct systems.

460.202 Thermostats and controls.

460.203 Service water heating.

460.204 Mechanical ventilation fan efficacy.

460.205 Equipment sizing.

DOE will hold a public meeting on Wednesday, July 13, 2016 from 9:00 a.m. to 4:00 p.m. in Washington, DC. DOE will accept comments, data, and information regarding this proposed rule before and after the public meeting, but no later than 60 days after the date of publication in the Federal Register.

Issues on which DOE Seeks Comment -

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

1. Relationship with the HUD Code.

2. Scope and effective date.

3. Definitions.

4. Air barrier.

5. Tubular daylighting devices.

6. Climate zones.

7. Home size.

8. Paths for compliance with the building thermal envelope standards.

9. Insulated siding.

10. U-factor alternatives.

11. Calculation of average SHGC.

12. Insulation installation requirements for floors.

13. Design criteria for envelope sealing.

14. Impact of envelope sealing on indoor air quality.

15. Duct sealing.

16. Thermostats and controls.

17. Demand recirculation systems.

18. Drain water heat recovery units.

19. Equipment sizing.

20. Lighting equipment standards.

21. Simulated performance alternative.

22. Waivers and exception relief.

23. Compliance and Enforcement Program Options

24. Compliance and Enforcement Program Costs and Time Requirements.

25. Increased costs of components.

26. Lifecycle cost analysis.

27. Affordability

28. Manufacturer impacts analysis – markups.

29. Shipments analysis.

30. Shipment growth rate.

31. Price Elasticity.

32. National impacts analysis.

33. Emissions analysis.

SALES

ADOPTED RULE

North Dakota

Sales tax - Not sold in conjunction with installation

Effective 7/1/2016, this rule amends N.D. Admin. Code 81-04.1-04-31, to provide that manufactured (formerly, mobile) homes, not sold in conjunction with installation, are tangible personal property subject to sales tax at a reduced rate on the gross receipts. Installation of a manufactured home includes any method established under section 54-21.3-08. A manufacturer or seller who permanently attaches manufactured homes to a foundation or provides installation by any method established under 52-21.3-08 is subject to tax in the same manner as a construction contractor and is liable for tax based on the cost of materials to the manufacturer or seller.

The rule adds the qualification “not sold in conjunction with installation,” and the reference to the statute.

The rule also adds that a manufactured home that is sold and will be installed in another state is not subject to tax.

The rule also amends N.D. Admin. Code 81-04.1-04-32. Manufactured homes - Sales and rentals, to replace “mobile homes” with “manufactured homes.”

TITLING AND PERFECTION

LEGISLATION

Arizona

Certificates of title

2016 AZ H 2535. Enacted 5/17/2016. Effective 8/6/2016.

This bill amends Ariz. Rev. Stat. Ann. § 28-101 to add the following definitions:

11. "Certificate of ownership" means a paper or an electronic record that is issued in another state or a foreign jurisdiction and that indicates ownership of a vehicle.

12. "Certificate of title" means a paper document or an electronic record that is issued by the department and that indicates ownership of a vehicle.

59. "Title transfer form" means a paper or an electronic form that is prescribed by the department for the purpose of transferring a certificate of title from one owner to another owner.

The bill amends the definition of “dealer” to add that it is a person who has paid fees pursuant to section 28-4302.

The bill amends Ariz. Rev. Stat. Ann. § 28-2008, Duplicate certificate of title, permit, registration card or license plates, to provide that if a paper certificate of title is lost or mutilated or becomes illegible, the person entitled to the certificate of title may apply for a duplicate or substitute certificate of title by furnishing information satisfactory to the department. The department may implement procedures related to the issuance of a duplicate paper certificate of title.

Ariz. Rev. Stat. Ann. § 28-2051 has been amended to provide that an application for a certificate of title for a new vehicle must include a manufacturer's certificate of origin showing the date of sale to the dealer or person first receiving the vehicle from the manufacturer. Before the department issues a certificate of title to a new vehicle, a manufacturer's certificate of origin shall be surrendered to the department.

The bill amends Ariz. Rev. Stat. Ann. § 28-2055 to provide that the department or an authorized third party shall do both of the following:

1. Create the certificate of title with space for notation of liens and encumbrances on the vehicle at the time of transfer.

2. provide forms for assignment of title or interest and warranty by the owner that contains the odometer mileage disclosure statement pursuant to section 28-2058.

Ariz. Rev. Stat. Ann. § 28-2060, Transfer of ownership by operation of law, has been amended to provide that if ownership of a motor vehicle for which a certificate of title has been issued in this state or another state reverts through operation of state law to a lienholder of record through repossession pursuant to the terms of a security agreement or through another similar instrument that is valid in such state, an affidavit by the lienholder of record stating that the vehicle was repossessed on default of the terms stated in the security agreement or similar instrument is proof of ownership, right of possession and right of transfer.

The bill adds that if the lienholder of record is a financial institution as defined in section 28-4301, the lienholder of record shall electronically submit the repossession affidavit to the department. The director shall prescribe the form and content of the affidavit. This state and its agencies, employees and agents are not liable for relying in good faith on the content of the affidavit.

The bill amends Ariz. Rev. Stat. Ann. § 28-2063, Mobile home certificate of title, to provide that the department shall issue a certificate of title for a mobile home that is customarily kept in this state. Formerly, the section provided that “a mobile home that is customarily kept in this state shall be titled with the department.”

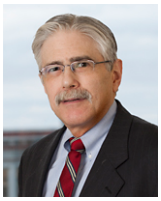
The bill amends Ariz. Rev. Stat. Ann. § 28-2064, Electronic certificates of title system, to provide that the director shall :

1. Establish procedures for issuing and maintaining an electronic certificate of title system that is applicable to all certificate of title transactions performed in this state.

2. Develop methods to electronically share information related to applications for certificates of title with law enforcement agencies and entities licensed under this title.

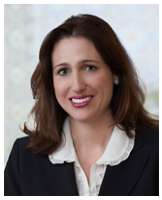
Provides that the director may adopt rules as necessary to implement this section, including the criteria for when the department may issue a paper certificate of title.

The bill amends Ariz. Rev. Stat. Ann. § 28-2134, Satisfaction of lien or encumbrance, to provide that when a holder of a lien or encumbrance receives payment in full satisfying a lien or encumbrance recorded under this article, the holder of the lien or encumbrance shall release the lien or encumbrance notify the owner of the vehicle at the address shown on the certificate of title or, if the holder of the lien or encumbrance has been previously notified of sale or transfer of the vehicle, to the person who is legally entitled to possession that the department has issued a certificate of title to the person for the vehicle.



MARC LIFSET is a member in the firm's business law section, where he advises banks and financial institutions regarding consumer financial services issues, licensing, regulatory compliance and legislative matters. Marc has carved a place for himself in the manufactured housing lending arena as the primary drafter and proponent of New York's Manufactured Housing Certificate of Title Act. Marc is chairperson of the Manufactured Housing Institute ("MHI") Finance Lawyers Committee and serves on the Board of Governors of the MHI Financial Services Division. He is the primary draft person of manufactured home titling and perfection legislation in Alaska, Louisiana, Maryland, Missouri, Nebraska, New York, North Dakota and Tennessee. Marc represents manufactured home lenders, community operators and retailers throughout the country and is a frequent lecturer at industry conventions.

Find out more about Marc here:
http://www.mcglinchey.com/Marc-J-Lifset



LAURA GRECO is of counsel in the consumer financial services, business law, and commercial litigation groups of the firm's Albany office. Laura represents manufactured housing lenders, banks, mortgage companies and other financial institutions in lawsuits involving all areas of consumer finance. Laura has experience dealing with claims that include federally regulated areas as the Truth in Lending Act, Real Estate Settlement Procedures Act, Fair Credit Reporting Act, Fair Debt Collection Practices Act, and others, as well as representing clients in state and federal actions concerning the foreclosure and servicing procedures of mortgage servicers and lenders.

Find out more about Laura here:
http://www.mcglinchey.com/Laura-Greco

JEFFREY BARRINGER is a member in the firm's consumer financial services practice, where he regularly advises financial institutions, mortgage companies, sales finance companies and other providers of consumer financial services on compliance with state and federal law, including usury restrictions, preemption, licensing and other regulatory compliance matters. Jeff's experience includes assisting manufactured housing finance companies, retailers, and communities navigate the state and federal regulatory environment to establish and maintain effective finance programs. Jeff is also a frequent lecturer on legal issues facing the industry.

Find out more about Jeff here:
http://www.mcglinchey.com/Jeffrey-Barringer