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!

At long last, summer is upon us! Legislatures passed a significant amount of legislation prior to heading off to the beach. New York state passed its zombie property bill, which is sure to make servicers feel that they are in the *Night of the Living Dead*. Hawaii said "Aloha" to mortgage servicers (we'll let you figure out the meaning of that one). Michigan amended its laws concerning debt collectors and collection agencies. North Carolina, South Carolina, and Louisiana made changes, both big and small, to their titling and perfection statutes. Nevada changed its voluntary surrender procedures as well.

In the judicial arena, we learned that you better be listing escrowed insurance proceeds in a TILA payoff statement, or it is class action time. That, and don't mess with a tax lien. Ever.

This, and so much more, awaits! Enjoy!

IN THIS ISSUE

Contents

WELCOME!	**1**
ARBITRATION	**2**
COMMUNITIES	**3**
DEFAULT SERVICING	**7**
INSTALLATION	**21**
LICENSING	**21**
RECORDING	**29**
SALES AND WARRANTIES	**29**
TITLING AND PERFECTION	**31**

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ARBITRATION

CASE LAW
Enforcibility

CASE NAME: *Ware v. Santander Consumer USA, Inc.*
DATE: *12/10/2015*
CITATION: *United States District Court, S.D. West Virginia, Huntington Division. Slip Copy. 2015 WL 8492762*

Plaintiffs alleged that Defendant assessed excess fees and late fees in violation of West Virginia law and in breach of contract. Plaintiffs further asserted that hundreds, and perhaps thousands, of similarly situated West Virginia consumers were assessed such fees and, therefore, Plaintiffs sought class action status of their claims.

Defendant moved to compel arbitration and dismiss, contending that Plaintiffs were bound by an arbitration clause in a modification agreement.

The Court noted specific language on the first page of the Modification Agreement that stated: "The effective date of the modified terms shall be the date [Santander] accepts and signs this Agreement, provided you sign and return this Agreement to [Santander] within 14 days of the date set forth above." Although there was space for Defendant to sign and date the Modification Agreement, Defendant did not sign or date the document. In fact, the only signature appearing on the document is that of Lauranna Ware. Thus, by the Modification Agreement's own terms, it was never properly executed and never took effect.

Further, Plaintiffs never acted upon the purported agreement. Plaintiffs provided the Court with their payment history showing they never paid the modified amount of $231.86. Instead, the payments they made were either at or near the original payment amount of $386.44. Furthermore, when Lauranna Ware requested a copy of their contract, Defendant only faxed her a copy of the original contract with Citifinancial, which does not contain an arbitration clause.

In addition, in four different places, Defendant emphasized that time was of the essence and Plaintiffs had to return the document within fourteen days of March 30, 2011. However, the facsimile date stamp on the top of the Modification Agreement submitted as Exhibit A to Defendant's motion clearly showed that the document was not faxed back to Defendant until May 20, 2011, far outside the fourteen-day window.

Accordingly, the Court found there was no contractual relationship between the parties by virtue of the Modification Agreement and, therefore, Defendant could not force Plaintiffs to arbitrate their claims or arbitrate the enforceability of the provision.

Defendant's motion denied.

CASE LAW
Conflicting agreements

CASE NAME: *Souza-Bastos v. Federal Auto Brokers, Inc.*
DATE: *06/10/2016*
CITATION: *Court of Appeals of Ohio, Third District, Paulding County. Slip Copy. 2016 WL 1730582*

In this case, the defendant appealed from an order denying its motion to dismiss plaintiff's complaint in favor of binding arbitration.

According to the appeals court, plaintiff purchased a used car from defendant. In connection with the sale, plaintiff was required to sign three different documents, each of which contained an arbitration clause. However, the three clauses contained numerous contradictory provisions, rendering them hopelessly confusing to the average consumer. The clauses set forth different statutes of limitations applicable to the consumer's claims. They also included contradictory requirements as to whether the American Arbitration Association must be

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used as the arbitration forum, may not be used at all, or may be used subject to defendant's approval. The clauses conflicted on whether the dealership would pay the consumer's arbitration fees or whether the consumer must pay the fees. They also set forth three different geographic locations where the arbitration must be held. One clause required the consumer to provide written notice to the dealership and wait thirty days before filing for arbitration, while the other clauses had no notice requirement. One of the clauses did not waive the consumer's right to pursue statutory claims in court, while two of the clauses contained a waiver of statutory claims. Two clauses waived the right to file a class action, while the third did not.

One of the documents contained a supersession clause, providing that if a subsequent agreement contained a conflicting or inconsistent arbitration provision "the terms of such subsequent arbitration provision shall govern." However, all three documents, containing the conflicting arbitration clauses, were signed on the same day.

The Court found that the cumulative effect of the many inconsistencies and unclear passages in the arbitration terms within the three documents compel it to declare them unenforceable for lack of mutual assent.

Affirmed.

COMMUNITIES

CASE LAW

Sales – Fraud

CASE NAME: *Sewell v. Coviello*
DATE: *03/08/2016*
CITATION: *Court of Common Pleas of Delaware, Kent County. Not Reported in A.3d. 2016 WL 3152567*

According to the Complaint, the plaintiffs owned a mobile home and leased land from Willow Tree Mobile Home Park, LLC, a Delaware entity owned by the defendant. In preparation of moving to Florida for medical reasons, the plaintiffs alleged that the defendant orally agreed to sell the plaintiffs' mobile home at the market price of $15,000 and that he would mail them a check of the proceeds minus the costs for payment of the accrued taxes on the home. In order for the defendant to legally sell the mobile home, the plaintiffs signed over the title to their home to the defendant to be placed in the name of his business Chris' Mobile Home Sales, LLC, a licensed dealer for mobile homes. Approximately two weeks later, the defendant mailed the plaintiffs a $375 security deposit check and a notice stipulating that the plaintiffs abandoned their home. The plaintiffs alleged that as a result of the defendant's misrepresentations, they lost their home and the defendant, who rented out the plaintiffs' home, was profiting from a home for which he did not pay.

The defendant filed a Motion to Dismiss and denied entering into an oral agreement with the plaintiffs. The defendant contended that the plaintiffs abandoned their home and as a result he placed the title in the name of his business Chris' Mobile Home Sales. Furthermore, the defendant contended that pursuant to 6 Del. C. § 18–303(a) he cannot be held personally liable for the debts, obligations, and liabilities of Willow Tree Mobile Home Park, LLC, and Chris' Mobile Home Sales, LLC, solely by reason of being a member or manager of the LLC.

In their response, the plaintiffs asked the Court to award them triple damages for a claim of unlawful ouster.

The Court found that under Delaware laws of agency, Delaware courts have held corporate officials and directors liable for their participation in tortious conduct, such as fraud, even if they are acting in an official capacity. Although the plaintiffs did not expressly state fraud, they sufficiently alleged facts showing that they were entitled to relief.

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However, the Court also found that the plaintiffs failed to plead sufficient facts to state a claim for unlawful ouster. Furthermore, the plaintiffs failed to plead a claim for unlawful ouster in their Complaint as required by Court of Common Pleas Civil Rule 8(a). Because the Complaint failed to state a claim, the Court hereby dismissed the unlawful ouster claim without prejudice.

Motion to dismiss denied.

CASE LAW - Pending

Illegal terms

CASE NAME: *Queens Mobile Home Community Et Al V. JP El Paso I, LLC*

CITATION: *U.S. District Court, Western District Of Texas (El Paso), 3:15-CV-00298*

Plaintiffs are an informal tenant association and individuals who rented mobile home spaces at the Queens Mobile Home Park at the time the Defendant purchased the park in the Summer of 2015. Plaintiffs claim that Defendant violated their rights by asking them, under threat of eviction to sign a new lease and accept community rules that contain what they allege are illegal terms.

These terms include:

Allowing Defendant to enter a tenant's home if the rent is three days late, declare it abandoned and take ownership of it;

Cutting the state mandated notice requirements in half for lease non-renewal;

Prohibiting a family from hanging window curtains of a color other than white; and

Requiring any construction activity to be conducted only between the hours of 12:00 pm and 4:00 pm on Saturday.

According to the Complaint, after Plaintiffs obtained a temporary restraining order, Defendant provided a lease renewal to tenants that eliminated some of the above terms.

The Complaint alleges violations of the Texas Manufactured Home Tenancies Act, Chapter 94 of the Texas Property Code, and seeks declaratory relief, a permanent injunction and attorney's fees.

The case was heard by federal court and, on 2/2/2016, the case was remanded to County Court. A jury trial is scheduled in that court on 10/18/2016.

LEGISLATION

Iowa

Liens – Sewer charges

This bill adds a new subparagraph to Iowa Code § 384.84, subsection 4, paragraph a, to provide that a lien for rates or charges for the services of sewer systems, storm water drainage systems, sewage treatment, solid waste collection, water, solid waste disposal, or any of these services, if not paid shall not be placed upon a premises that is a mobile home, modular home, or manufactured home served by any of the services under that subparagraph if the mobile home, modular home, or manufactured home is owned by a tenant of and located in a mobile home park or manufactured home community and the mobile home park or manufactured home community owner or manager is the account holder, unless the lease agreement specifies that the tenant is responsible for payment of a portion of the rates or charges billed to the account holder.

The bill also amends Iowa Code § 384.84(10) to provide that, for the purposes of this section, "premises" includes a mobile home, modular home, or manufactured home as defined in section 435.1, deleting the qualification that the home be taxed as real estate.

The bill further amends Iowa Code § 384.84(11) to provide that, except for mobile home parks or manufactured home communities where the mobile

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home park or manufactured home community owner or manager is responsible for paying the rates or charges for services, a lien shall not be filed against the land if the premises are located on leased land. If the premises are located on leased land, a lien may be filed against the premises only (adding the exception for where a park or community owner is responsible for paying the rates or charges).

LEGISLATION
Minnesota
Park assessment fees

2015 MN H 2749. Enacted 6/1/2016. Effective 7/1/2016.

This bill amends Minn. Stat. § 327C.03(6) to provide that, in the event a park owner has been assessed under section 327C.095, subdivision 12, paragraph (c), the park owner may collect the $15 (formerly, $12) annual payment required by section 327C.095, subdivision 12, for participation in the relocation trust fund, as a lump sum or, along with monthly lot rent, a fee of no more than $1.25 (formerly, $1) per month to cover the cost of participating in the relocation trust fund.

The bill amends Minn. Stat. § 327C.095(12) to provide that, if the unencumbered fund balance in the manufactured home relocation trust fund is less than $1,000,000 as of June 30 of each year, the commissioner of management and budget shall assess each manufactured home park owner by mail the total amount of $15 (formerly, $12) for each licensed lot in their park, payable on or before September 15 of that year.

If assessed under this paragraph, the park owner may recoup the cost of the $15 assessment as a lump sum or as a monthly fee of no more than $1.25 (formerly, $1) collected from park residents together with monthly lot rent as provided in section 327C.03, subdivision 6. Park owners may adjust payment for lots in their park that are vacant or otherwise not eligible for contribution to the trust fund under section 327C.095, subdivision 12, paragraph (b), and deduct from the assessment accordingly.

PROPOSED RULE
Nevada
Limited lien resale license – Voluntary surrender

Published 6/29/2016.

This rule would add a new section to Nev. Admin. Code § 489 to provide that any application for certificate of ownership for a home acquired through voluntary surrender in accordance of NRS 489.336 must be accompanied by an Affidavit of Voluntary Surrender on a form provided by the Division.

The rule amends Nev. Admin. Code § 489.760 to provide that "Licensee" means a landlord or manager of a mobile home park to whom a limited lien resale license (formerly, a limited resale license) is issued by the Division pursuant to NAC 489.780.

The rule would amend Nev. Admin. Code § 489.775 to add that before a landlord or manager of a mobile home park may sell a used mobile home or manufactured home acquired through a voluntary surrender by the legal owner of the mobile or manufactured home the landlord or manager must obtain a limited lien resale license from the Division. The section currently says a license may sell a home to enforce a lien pursuant to NRS 108.265 to 108.367.

Nev. Admin. Code § 489.780 is to be amended to provide that a copy of the Affidavit of Voluntary Surrender, if applicable, must be submitted by a limited lien resale licensee to sell a used mobile home or manufactured home.

LEGISLATION
North Carolina
Trespass

2015 NC H 283. Enacted 6/22/2016. Effective 12/1/2016.

This bill amends N.C. Gen. Stat. § 14‑159.12 to provide that first degree trespass (if a person, without authorization, enters or remains on the premises or in a building of another) is a Class 1 felony, to include a fine of not less than $1,000 for each violation if any of the following circumstances exist:

(1) The offense occurs on real property where the person has reentered after having previously been removed pursuant to the execution of a valid order or writ for possession.

(2) The offense occurs under color of title where the person has knowingly created or provided materially false evidence of an ownership or possessory interest.

ADOPTED RULE
Vermont
Lot fee – Lot rent - Eviction

Effective 7/1/2016, this rule amends the regulations of the Agency of Commerce and Community Development, the Department of Housing and Community Development, 11 020 001 Vt. Code R. §§ 1 -14.7, regarding Mobile Home Parks.

The rule provides that, by September 1 of each year, every park owner shall register their mobile home park(s), and pay the annual lot fee if applicable.

Section 6.3, Lot Rent Dispute: Mediation, has been amended to provide that if it is demonstrated that the park owner failed to send the notice to the most current address provided to the park owner by any leaseholder, and that notice to the leaseholder was delayed for that reason, the petition shall be filed within 15 business days of the date on which it is demonstrated that every affected leaseholder had received notice.

The amendment adds that a majority shall be determined by one vote per leasehold, though no leaseholder shall have more than one vote.

The amended rule specifies that only if the park owner's noncompliance with the obligation of habitability materially affects health and safety may the leaseholder take certain, specified actions.

With respect to evictions, the amended rule adds that notice must be given to any resident known to the park owner to be residing in the mobile home, in addition to the leaseholder.

The rule regarding park closures has been amended concerning the Notice Period to provide that the commencement of the Notice Period shall not be delayed by a resident or leaseholder's failure to provide updated address or contact information to the park owner.

The amendment provides that the Notice Date for the sale of a park, if the park owner failed to send notice to the most current address provided to the park owner by a mobile home owner, and that notice to the mobile home owner was delayed for that reason, shall be the date on which it is demonstrated that every mobile home owner has received notice (rather than the date upon which the Commissioner has received notice of intent to sell the mobile home park).

The amended rule replaces § 14.1 Criminal Penalties, with a new § 14.1, Notice of Alleged Violation, to provide that notice of alleged violation must be in writing and must include specified information.

The person alleged to have committed the violation shall have 20 days from the date of service to file a written request for a hearing. If no request for a hearing is filed

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within 20 days, the notice and penalty shall be deemed a final order of the Commissioner.

Notice of alleged violation and penalties issued under these rules shall not limit the authority of the Commissioner to bring a civil action for damages or injunctive relief, or both, to refer a violation to the Attorney General or State's Attorney for enforcement, or to take any other appropriate enforcement action.

Section 14.2, Civil Enforcement, has been replaced with a new § 14.2, Hearing Process.

The amendments also add the following sections: 14.3 Administrative Penalty/Fine; 14.4, Decision; 14.5 Appeal to Superior Court; and 14.6 Collection.

DEFAULT SERVICING

CASE LAW

FDCPA - Foreclosure

CASE NAME: *Tharpe v. Nationstar Mortg. LLC*
DATE: *01/20/2016*
CITATION: *United States Court of Appeals, Eleventh Circuit. 632 Fed.Appx. 586 (Mem). 2016 WL 231494*

Tharpe alleged that Nationstar Mortgage violated the FDCPA through a series of communications about a mortgage bearing his name. The district court dismissed his complaint, construing the complaint to allege that Nationstar's only communication with Tharpe that violated the FDCPA was its filing of the foreclosure action. The court held that the FDCPA covers only debt collection activity and "[a] foreclosure action does not count as debt collection activity for FDCPA purposes." Tharpe appealed.

The appeals court found that, regardless of whether Nationstar was otherwise attempting to foreclose on the mortgage bearing Tharpe's name, if it also communicated with him in order to collect from him on the underlying debt, that communication is subject to the FDCPA. The Court further found that Tharpe's complaint alleged more than that Nationstar undertook to foreclose on his property. It also alleged that "Nationstar and its predecessors" had been attempting to collect from him on the underlying note "for the last 7 years," including at times when Nationstar was not pursuing foreclosure. The allegations in the complaint thus extended beyond the foreclosure action, necessarily implying communications about collecting on the underlying debt. That, along with the fact Tharpe has plausibly alleged Nationstar is a "debt collector" of the sort covered by the FDCPA, Nationstar's motion to dismiss should have been denied.

In reaching this conclusion, the Court left unanswered whether foreclosing on mortgaged property is, by itself, debt collection activity within the scope of the FDCPA.

Reversed and remanded.

CASE LAW

FDCPA – Attorney review

CASE NAME: *Hamilton v. LLM Management, Inc.*
DATE: *02/11/2016*
CITATION: *United States District Court, E.D. Pennsylvania. Slip Copy. 2016 WL 589869*

The plaintiff contended that the defendants violated her rights under the FDCPA by sending her collection letters on law firm letterhead and the law firm whose letterhead was used was a "sham law firm," one that did not truly exist. The plaintiff did not argue that the content of the collection letters violated the FDCPA. Instead, she argued that it was the use of the law firm letterhead that was the deceptive practice as she contended that the two law firms at issue were "bogus" law firms and that it was the use of the letterhead that "represents or implies that a lawyer has reviewed the file, made appropriate inquiry, and has exercised professional judgment in the sending

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of the collection letter, and that the letter indeed came from a Pennsylvania law firm."

However, the Court noted that the letters stated, In bold lettering in the middle of the page was that: "[a]t this time, no attorney with this firm has personally reviewed the particular circumstances of your account(s)." The letter further noted that "[t]his communication is from a debt collector. This is an attempt to collect a debt and any information, (sic) obtained will be used for that purpose."

The Court found that defendants' use and placement of this language makes it clear to the average consumer that the attorney was not, at the time of the letter's transmission, acting in any legal capacity. As such, the letters were complaint with the FDCPA and summary judgment was granted to the defendants.

CASE LAW
FDCPA – Garnishment fees

CASE NAME: *In re: FDCPA Cognate Cases*
DATE: *03/28/2016*
CITATION: *United States District Court, W.D. Michigan, Southern Division. Slip Copy. 2016 WL 1273349*

Plaintiffs alleged that Defendants included costs of writs of garnishment issue as part of the total amount due in the request for that writ, plus sometimes included costs from previous garnishment attempts that had not resulted in money changing hands and these costs were improper under the Michigan Court Rules and amounted to misleading statements that violated the FDCPA.

The Court found that the Michigan garnishment process does not allow a judgment creditor to tax garnishment costs before prevailing party status is settled on the garnishment itself. Under the prevailing party rule, garnishment plaintiffs must establish their right to recover costs by first achieving success on the garnishment action itself, just as a plaintiff in an original action establishes a right to recover costs by first winning on the merits of the case.

The Court found that the debt collectors in these cases violated Michigan garnishment law by claiming garnishment costs as due before they established their right to do so as prevailing parties on the garnishments themselves. Many of the requests additionally claimed costs associated with previous garnishment attempts that had not been successful.

The Court further found that claiming as presently due a category of costs that were not actually due-even in small amounts-was a material misstatement for FDCPA purposes.

The Court also found that debt collectors who hire lawyers to help them collect on debts can be held responsible for the collection activities of those lawyers. The attorney Defendants had actual or apparent authority to file the requests and writs for garnishment on behalf of the debt collector Defendants.

Finally, the Court held that Defendants should have an opportunity going forward to attempt to establish the good faith defense laid out in 1692(k) of the FDCPA.

Plaintiffs' motions for summary judgment were granted in part, and denied in part.

CASE LAW
FDCPA – Deceptive representation

CASE NAME: *Moukengeschaie v. Eltman, Eltman & Cooper, P.C.*
DATE: *03/31/2016*
CITATION: *United States District Court, E.D. New York. Slip Copy. 2016 WL 1274541*

Eltman mailed a Collection Letter to Plaintiff, notifying Plaintiff that a judgment against her had been referred to Eltman's asset investigation department for purposes of collection. Eltman stated it was acting on behalf of its

client, LVNV, and that it "has been instructed to find any assets available to help us collect on the judgment." The Collection Letter also stated that, "[i]n certain circumstances, the law allows creditors to seek seizure ... of certain non-exempt assets owned by you to pay the judgment that you owe," and then lists various types of property that may be non-exempt assets.

Plaintiff noted that the Collection Letter failed to explain that LVNV did not purchase the debt directly from Capital One, but rather from North Star Capital Acquisitions LLC, after the debt had been reduced to judgment. Plaintiff stated that neither LVNV nor North Star "took the steps required" under state law to assign the debt. Plaintiff also stated that she was not made aware of the 2009 proceeding in which North Star obtained a default judgment against her.

Plaintiff asserted that the Collection Letter was false, deceptive and unfair and violated the FDCPA.

The Court found that Plaintiff sufficiently pled that Defendants had no intent to investigate or seize assets belonging to Plaintiff or any other consumers, as it is not Defendants' practice to seize assets to enforce on small judgments. Accepting this allegation as true, Plaintiff stated a claim that the Collection Letter violates section 1692e(4), e(5) and f(6) by making false threats about the seizure of assets.

The Court also found that although filing of an assignment is not necessary for the assignment to be valid, because LVNV was an assignee to Plaintiff's judgment and threatened to collect on the judgment allegedly before Plaintiff received notices of the assignment, Plaintiff sufficiently pled violations of section 1692e(4), e(5) and f(6), all of which prohibit threats to take action that is not legally authorized.

Moreover, even if Eltman had an "asset investigation department," but at the time it sent the Collection Letter it had not yet begun such an asset search, the Collection Letter's statement that the account has been "referred" to such a department is "reasonably susceptible to an inaccurate reading" and thus is "deceptive" in the manner prohibited by section 1692e and e(10

But, according to the Court, Defendants did not make a false representation or engage in deceptive practices by stating that "in certain circumstances, the law allows creditors to seek seizure ... of certain non-exempt assets" or by explaining that "[t]hese non-exempt assets may include" the items on a list of certain types of property, even if, at times, state law exempts these assets from seizure.

Further, the Collection Letter's disclaimer specified that "no attorney with the firm has personally reviewed the particular circumstances of your account," language approved of by the Second Circuit. The Collection Letter further stated that "this letter should not be taken as a representation of any such review nor as a threat of legal action." Standing alone, the disclaimer language in the Collection Letter could not mislead the least sophisticated consumer into believing that an attorney had evaluated her case.

The Court granted in part and denied in part Defendants' motion to dismiss.

CASE LAW

Force-placed insurance – filed rates

CASE NAME: *Burroughs v. PHH Mortgage Corporation*
DATE: *04/08/2016*
CITATION: *United States District Court, D. New Jersey. Slip Copy. 2016 WL 1389934*

Plaintiffs contended that PHH has a practice of purchasing force-placed hazard and wind insurance through the subsidiaries of Assurant, Inc. pursuant to agreements that return a financial benefit to PHH. Plaintiffs asserted four counts against PHH: Violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968, breach of contract, including breach of the implied covenant of good faith and fair

dealing, and breach of fiduciary duty/misappropriation of funds held in trust.

PHH's primary basis for dismissal was that the filed rate doctrine barred all the claims.

The Court found that, regardless of the rate charged for lender-placed insurance, what was being challenged here was not the rate itself, but rather the mortgage servicer's alleged exploitation of its ability to force-place hazard insurance in order to reap additional, unjustified profits in the form of payments disguised as purportedly legitimate fees. The protection of the filed rate doctrine should not be extended to shelter mortgage servicers and their co-conspirator insurers from liability for their fraud, if such fraud can be proven. Therefore, PHH's motion to dismiss plaintiffs' claims based on the filed rate doctrine was denied.

CASE LAW

Bankruptcy – Value of collateral

CASE NAME: *Magee v. Portfolio Recovery Associates, LLC*
DATE: *05/17/2016*
CITATION: *United States Bankruptcy Court, D. South Carolina. Slip Copy. 2016 WL 3027058*

Debtor filed Chapter 13 and listed a mobile home as personal property not attached to real property Debtor owned. Debtor listed the value of the mobile home as $27,100.00 and the value of the real property as $10,500.00, for a total value of $37,600.00. Debtor listed on her Schedule D a debt owed to Vanderbilt in the amount of $83,728.00 secured by the mobile home and the real property. Vanderbilt filed a proof of claim, listing the debt as $83,727.37.

Vanderbilt filed an objection to confirmation of Debtor's plan, asserting that her valuation of the mobile home was too low. The parties agreed the value of the real property was $11,250.00; thus, the only disputed issue was the value of the mobile home.

Debtor prepared an appraisal of the mobile home on the NADA website indicating the base structure value of the mobile home was $27,643.00 and after being discounted for the condition of the home, which Debtor identified as "poor," the total adjusted retail value for the home, with optional equipment, was $25,896.15.

Vanderbilt's appraiser, Mr. Banks, indicated that the total value of the mobile home was $44,600 and listed the overall condition of the home as "good."

The parties agreed that the mobile home was not affixed to the real property and therefore was personal property. The proper value for personal property securing an allowed claim is the replacement value of such property without deduction for costs of sale or marketing.

Based on the input of inaccurate information and the improper condition rating of "poor" used by Debtor, the Court found that the NADA report she created was inaccurate. In addition, the Security Agreement was broad enough to encompass the components with which the home was equipped, as well as the porches, steps, and air conditioning system.

On the other hand, the Court found Mr. Banks' appraisal higher than the appropriate starting price for valuation of Debtor's home. The NADA value for the base "box" of a home was not dispositive of what a retail merchant would charge.

The Court found that the starting price for Debtor's home should be $40,000. The Court then adjusted the value of the mobile home downward due to the mobile home's condition, which was closer to "fair" condition than "good". Thus, the Court applied a discount of $2,000 to reflect the mobile home's actual condition. The value of Debtor's home was also discounted $1,000 to compensate for warranties or service agreements that would be included in a replacement of the mobile home.

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The Court determined the value of Debtor's mobile home to be $37,000.00. Debtor's plan used a value of $27,100, therefore, confirmation of Debtor's plan was denied.

CASE LAW

Bankruptcy – Value of collateral

CASE NAME: *In re Thornton*
DATE: *05/23/2016*
CITATION: *United States Bankruptcy Court, S.D. Indiana, Indianapolis Division. Slip Copy. 2016 WL 3092280*

21st Mortgage held a security interest in the debtors' manufactured home. The debtors did not own the land upon which the Home sat.

The debtors' chapter 13 plan attempted to cram down 21st Mortgage's secured claim and proposed that the value of the Home was $20,000.

The parties did not dispute that the Home was personal property which was acquired by the debtors for personal, family or household purposes. Under § 506(a)(2), the value of personal property is determined based on replacement value of the property. The replacement value of a manufactured home is arrived at by using either the cost or sales comparison approach, or a combination of the two.

The creditor's expert, Harold Collins, applied the cost approach and used the NADA Guide to determine replacement value and maintained that the Home's replacement value was $41,017. Collins did not use the sales comparison approach.

The debtors' appraiser, T.A. Freije, used both the cost approach and the comparable sales approach. He opined that the Home's value was $20,000 under both approaches.

The Court found that the comparable sales used by Freije were not sufficiently comparable. Neither home used was located in the same county as the home at issue and, in contrast to the debtor's home, both were singlewides and had gas utilities. Both homes had sold more than a year before and they were repossessions. Freije's adjustments to account for size and age of the first comp were inadequate.

Collins' appraisal substantially complied with the NADA methodology, and therefore the Court found that Collins' opinion as to value to be more credible.

Freije did not follow the NADA methodology. He included no itemized worksheets that detailed his adjustments. The analysis he used was not credible because it included three separate deductions for removal costs and contained nothing about cost of repairs and value of upgraded components which are essential in determining value.

The Court found that the costs incurred by the buyer in getting the property to its intended location is a cost of sale. Section 506(a)(2) expressly provides that costs of sale are not to be deducted in determining the replacement value of personal property. Section 506(a)(1) also prohibits deducting costs of removal from value when a debtor proposes to retain the property. The debtors' proposed use of the Home was retention on its current site, and not sale.

21st Mortgage had a security interest in the home and its accessions. Indiana's version of Article 9 of the UCC defines "accession" as "goods that are physically united with other goods in such a manner that the identity of the original goods is not lost". Here, Collins made an upward adjustment for value for the refrigerator, ice maker, oven, and gas washer and dryer. These goods would have independent utility if they were removed from the Home and were not so integrated with the Home that they could not be removed without injury. They were not accessions. Collins valued these appliances at $1080, and that amount was subtracted from $41,017.

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The court found the value of 21st Mortgage's secured claim to be $39,937. The debtors were ordered to: (1) file an amended chapter 13 plan consistent with the order; (2) convert the case to a chapter 7; or (3) dismiss the chapter 13.

CASE LAW

FDCPA – Spousal liability

CASE NAME: *Stacy Duplessie v. James D. Riddle*
DATE: *05/23/2016*
CITATION: *United States District Court, M.D. Louisiana. Slip Copy. 2016 WL 2993182*

The defendant is an attorney who regularly engages in the collection of consumer debts for third party clients.

Riddle filed a Petition for Suit on Promissory Note against Bonnie Duplessie in connection with a promissory note she executed in favor of 1st Franklin Financial. The promissory note at issue was incurred solely by Bonnie Duplessie and was only used for personal, family, and household purposes. At the time the note was signed, as well as when the petition was filed, Bonnie Duplessie was married to and living with the plaintiff, Stacy Duplessie.

The petition alleged: "[T]he defendant, Stacy E. Duplessie, is the non-signing spouse of the defendant, Bonnie Duplessie, and was so when the loan agreement was executed. Accordingly, pursuant to Louisiana community property laws, the plaintiff avers that the defendant, Stacy E. Duplessie, is liable on said debt to the extent of community property."

Thereafter, the petition was voluntarily dismissed regarding the claim against Stacy Duplessie.

Stacy Duplessie ("Duplessie") filed a complaint against Riddle, alleging that his actions constituted a violation of the FDCPA.

The Court found that, under Louisiana law, Duplessie was a proper defendant on the suit on the promissory note and was legally liable to the extent of the community property. Riddle did not seek to hold Duplessie personally liable, but sought only to hold him liable "to the extent of the community property." Therefore, as a matter of law, Riddle's action in naming Duplessie in its petition was not a false, misleading, or unfair debt collection practice subjecting him to liability under the FDCPA.

Defendant's Motion for Summary Judgment granted.

CASE LAW

FDCPA – Third party communication

CASE NAME: *Venechanos v. Green Tree Servicing, LLC*
DATE: *05/25/2016*
CITATION: *United States District Court, M.D. Pennsylvania. Slip Copy. 2016 WL 3001124*

Plaintiff received a form privacy notice which detailed her privacy rights under federal law and ability to limit the sharing of her personal information. The Notice indicated that Green Tree could share Plaintiff's personal information "for joint marketing with other financial companies." The Notice also indicated that Plaintiff could not limit Green Tree's sharing of Plaintiff's personal information "for joint marketing with other financial companies."

Richard Vines, a Director of Collections with Green Tree, reviewed all of Green Tree's records regarding Plaintiff's loan and determined that Green Tree had not communicated with any third parties in connection with the collection of any debt concerning Plaintiff. Moreover, "no information concerning [Plaintiff's] loan or [Plaintiff] was shared with any financial company or other third party…"

Plaintiff filed suit, alleging that Green Tree violated § 1692c(b) of the FDCPA by sharing plaintiff's personal information "for joint marketing with other financial companies." Section 1692c(b) provides that "[e]xcept as

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provided in section 1692b of this title [relating to obtaining location information] ... a debt collector may not communicate, in connection with the collection of any debt, with any person other than the consumer[.]"

The Court found that the undisputed evidence established that Green Tree had not communicated with a third party in connection with the collection of any debt concerning Plaintiff. Consequently, Green Tree's motion for summary judgment was granted.

CASE LAW
Tax liens – Priority

CASE NAME: *In re Riley*
DATE: *06/03/2016*
CITATION: *United States Bankruptcy Court, N.D. Mississippi. --- B.R. ----. 2016 WL 3147642*

The Chapter 13 Debtor owned of a mobile home with a value of $8,525.00. Ditech Financial LLC held a security interest in the mobile home and filed a proof of claim in the amount of $23,152.19.

Panola County filed 13 separate proofs of claims covering the mobile home taxes due from 2002 through 2014. Panola County held a statutory lien on the Mobile Home.

According to the Court, pursuant to Miss. Code Ann. § 27–35–1, Panola County's ad valorem tax claims on the Mobile Home had priority over Ditech's secured claim unless the mobile home was considered a motor vehicle. Motor vehicles, as defined in Miss. Code Ann. §§ 27–51–1 through 27–51–49 (the "Motor Vehicle Ad Valorem Tax Law"), are specifically excluded from the scope of Miss. Code Ann. § 27–35–1. Ditech argued that the Mobile Home was a motor vehicle and, thus, Miss. Code § 27–35–1 did not apply.

The term "motor vehicle," for purposes of the Motor Vehicle Ad Valorem Tax Law, is defined as "any device and attachments supported by one or more wheels which is propelled or drawn by any power other than muscular power over the highways, streets or alleys of this state." The definition goes on to add that mobile homes which are detached from any self-propelled vehicles and parked on land in the state are expressly exempt from the motor vehicle ad valorem taxes.

The Court noted that ad valorem taxes on mobile homes are addressed independently in §§ 27-53-1 through 27-53-33.

Accordingly, the Court found that mobile homes are not included in the motor vehicles exception cited Miss. Code § 27–35–1. As a result, Panola County's tax liens assessed on the Mobile Home had priority over Ditech's secured claim.

CASE LAW
FDCPA – Discovery Rule

CASE NAME: *Lyons v. Michael & Associates*
DATE: *06/08/2016*
CITATION: *United States Court of Appeals, Ninth Circuit. --- F.3d ---- 2016 WL 3192623*

According to Lyons, Michael & Associates are debt collectors who violated the FDCPA when they filed a lawsuit against her to collect on a debt. The FDCPA requires debt collectors who take legal action to collect a debt unrelated to an interest in real property to file in the judicial district where the consumer (1) "signed the contract sued upon," or (2) "resides at the commencement of the action." Lyons claimed that Michael & Associates sued her in the wrong county.

The district court concluded that the FDCPA's one-year statute of limitations began to run on the date that the debt collection action was filed, and because Lyons failed to bring this case within one year of that date, her claim was time-barred. The district court rejected Lyons' argument that, under the discovery rule, her complaint was timely filed within one year of the date that the defendants served her with process, which is when she first learned of the collection action.

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The appeals court referred to its decision in *Mangum v. Action Collection Service, Inc.*, 575 F.3d 935 (9th Cir. 2009). In that case, the Court held that the discovery rule applies in an FDCPA action.

The Court found that the fact that the alleged violation here was the wrongful filing of a debt collection action—rather than the wrongful disclosure of information to third parties as in *Mangum*—made no difference to it analysis, and held that the discovery rule applies equally regardless of the nature of the FDCPA violation alleged by a plaintiff.

Reversed and remanded.

CASE LAW

FDCPA – Bona fide error

CASE NAME: *Oliva v. Blatt, Hasenmiller, Leibsker & Moore, LLC*
DATE: *06/14/2016*
CITATION: *United States Court of Appeals, Ninth Circuit. --- F.3d ---- 2016 WL 3192623*

In 2013 Blatt, Hasenmiller, Leibsker & Moore, LLC, filed a collection lawsuit against Ronald Oliva in the first municipal district of the Circuit Court of Cook County. When Blatt filed the action, its choice of venue was expressly permitted under the FDCPA's venue provision as interpreted by *Newsom v. Friedman*, 76 F.3d 813 (7th Cir. 1996). The Court subsequently overruled *Newsom*, with retroactive effect, in *Suesz v. Med–1 Solutions, LLC*, 757 F.3d 636 (7th Cir. 2014) (en banc).

Oliva then sued Blatt for violating the FDCPA's venue provision as newly interpreted by *Suesz*. The district court granted summary judgment for Blatt, finding that Blatt relied on *Newsom* in good faith and was therefore immune from liability under the FDCPA's bona fide error defense.

On appeal, Oliva argued that the bona fide error defense did not apply because Blatt's violation resulted from its mistaken interpretation of the law.

The Court disagreed. In abiding by the Court's interpretation in *Newsom*, Blatt simply followed the controlling law of the circuit. Its failure to foresee the retroactive change of law heralded by Suesz was not a mistaken legal interpretation, but an unintentional bona fide error that precludes liability under the Act. The Court therefore affirmed the district court's entry of summary judgment for Blatt.

CASE LAW

Bankruptcy – Defective acknowledgment

CASE NAME: *Bank of America, N.A. v. Casey*
DATE: *06/16/2016*
CITATION: *Supreme Judicial Court of Massachusetts. --- N.E.3d ----474 Mass. 556. 2016 WL 3314033*

The Supreme Judicial Court of Massachusetts considered two questions certified to the Court by the United States Court of Appeals for the First Circuit. The questions, which arose in connection with a bankruptcy proceeding, concern the power and effect of an affidavit of an attorney executed pursuant to Mass. Gen. Laws ch. 183, § 5B, in relation to a mortgage containing a defective certificate of acknowledgment.

The two questions asked:

"1. May an affidavit executed and recorded pursuant to [G.L. c.] 183, § 5B, attesting to the proper acknowledgment of a recorded mortgage containing a Certificate of Acknowledgment that omits the name of the mortgagor, correct what the parties say is a material defect in the Certificate of Acknowledgment of that mortgage?

"2. May an affidavit executed and recorded pursuant to [G.L. c.] 183, § 5B, attesting to the proper acknowledgment of a recorded mortgage containing a

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Certificate of Acknowledgment that omits the name of the mortgagor, provide constructive notice of the existence of the mortgage to a bona fide purchaser, either independently or in combination with the mortgage?"

The Court answered both questions yes, in certain circumstances.

As to the first question, the Court found that an attorney's affidavit filed and recorded pursuant to § 5B that supplies the omitted names of the mortgagors, explains the circumstances of the omission, and confirms that in fact the affiant did witness the voluntary execution of the mortgage by the mortgagors on the date stated operates to cure the original defect in the acknowledgment. The curing of the defect in the acknowledgment also cures the defect in the original recording of the mortgage, and the mortgage thereafter is properly considered within the mortgage property's chain of title.

As to the second question, the Court held that, as applied to the chain of title to real property, constructive notice arises by operation of law under G.L. c. 183, § 4, in any case where the mortgage is properly recorded. If a deed or mortgage is recorded without an acknowledgment, it is not properly recorded and does not provide constructive notice. Similarly, a mortgage recorded with an acknowledgment that contains a material defect is not properly recorded and does not provide constructive notice of the mortgage.

Where, as here, the attorney's affidavit complies with the formal requirements of § 5B, attests to facts that clarify the chain of title by supplying information omitted from the originally recorded acknowledgement, and references the previously recorded mortgage, the affidavit—not by itself but in combination with that mortgage—provides legally adequate constructive notice to a bona fide purchaser or, here, a trustee in bankruptcy. This is so because the prior recording of the mortgage has been remedied and is deemed proper through the curative effect of the affidavit.

CASE LAW

Dual tracking – National Mortgage Settlement

CASE NAME: *Miller v. Bank of New York Mellon*
DATE: *06/16/2016*
CITATION: *Colorado Court of Appeals, Div. I. --- P.3d ----, 2016 WL 3364991*

Plaintiffs filed claims against five financial institutions (collectively the Banks). The Millers contended that the Banks improperly subjected them to dual tracking in violation of the consent judgment that resulted from the National Mortgage Settlement generally prohibiting dual tracking. The district court dismissed their complaint for failure to state a claim for relief, and the Millers appealed.

The appeals court concluded that the district court properly dismissed the Millers' tort claims because a consent judgment in a federal case challenging dual tracking did not create a private cause of action for third parties, and, therefore, the Millers did not have standing to bring their tort claims. Further, no special relationship existed between the parties to establish an independent duty. While the Millers benefited from the consent judgment when they received settlement funds, they were not parties to it.

Further, the Millers did not state a claim for breach of the implied duty of good faith and fair dealing because they had no reasonable expectation that their loan would be modified or that the Banks would refrain from dual tracking.

The loan and the deed of trust did not mention modification procedures at all. The loan and the deed of trust both specifically gave the bank the right to foreclose in the event of default and did not require it to consider or agree to a modification.

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Affirmed.

CASE LAW
Foreclosure – Tax sale

CASE NAME: *Vanderbilt Mortgage v. Vandergriff*
DATE: *06/17/2016*
CITATION: *Court of Appeals of Tennessee, AT KNOXVILLE. Slip Copy. 2016 WL 3453938*

Title to the real property at issue was originally acquired by the defendant and his former wife February 21, 1996. On March 22, 1996, the Vandergriffs entered into a "Retail Installment Contract–Security Agreement" regarding the purchase of a mobile home to be placed upon the Property. They also executed a "corrected deed of trust" regarding the Property, securing the indebtedness to James Clayton, Trustee, for the benefit of CMH Homes, Inc. Vanderbilt's attorney, Anthony R. Steele, subsequently became the successor trustee. In 2005, Lisa Vandergriff conveyed her interest in the Property via quitclaim deed to Phillip Vandergriff.

In 2008, the Property was sold at a delinquent tax sale to Brian Christiansen. On February 13, 2012, Mr. Christiansen executed a quitclaim deed, conveying title to the Property back to Mr. Vandergriff.

Throughout the period of Mr. Christiansen's ownership of the Property and until May 2013, Mr. Vandergriff continued to tender payments concerning his indebtedness pursuant to the 1996 promissory note. Following Mr. Vandergriff's failure to make payment as due in May 2013, notice of Vanderbilt's intent to foreclose was sent to Mr. Vandergriff and a non-judicial foreclosure sale was conducted on July 2, 2013. The successor trustee subsequently executed a deed conveying title to the Property to Vanderbilt as the highest bidder.

Vanderbilt filed a "Verified Complaint for Declaratory Judgment to Quiet Title and for Possession Upon Unlawful Detainer of Property" against Mr. Vandergriff "and/or Occupants." The Vandergriffs countered, inter alia, that Mr. Vandergriff owed no debt to Vanderbilt following the tax sale in 2008, and claimed that Mr. Vandergriff should receive a refund of any monies paid thereafter.

The trial court concluded that the Property "legally came into the hands of Vanderbilt" when the successor trustee's deed was executed following the foreclosure sale and that accordingly Vanderbilt held clear title to the Property. The court ordered that Vanderbilt was entitled to immediate possession. The Vandergriffs appealed.

The appeals court found that the lien on title to the Property in Vanderbilt's favor, created by the 1996 deed of trust, was extinguished in 2008 when the Property was sold at the tax sale.

The Court rejected Vanderbilt's assertion that when Mr. Vandergriff reacquired the Property following the tax sale, Vanderbilt's lien reattached, just as a judgment lien would attach to after-acquired property of the judgment debtor. A judgment lien requires the rendition of a judgment or decree by a court. Vanderbilt had not obtained such a judgment or decree at the time of the non-judicial foreclosure sale and therefore did not possess a judgment lien that would automatically attach to Mr. Vandergriff's property.

Although Mr. Vandergriff's debt to Vanderbilt based on the "Retail Installment Contract–Security Agreement" did not appear to have been extinguished, Vanderbilt did not have the authority to foreclose on the Property. Any subsequent deed conveying the Property to Vanderbilt based upon such improper foreclosure sale would therefore be a nullity.

The Court reversed the trial court's grant of summary judgment in favor of Vanderbilt and dismissed Vanderbilt's claim of ownership and possession based upon the invalid successor trustee's deed.

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CASE LAW

TILA – Insurance proceeds

CASE NAME: *Latasha Mclaughlin v. Wells Fargo Bank, NA*
DATE: *06/22/2016*
CITATION: *United States District Court, N.D. California. Slip Copy. 2016 WL 3418337*

In June 2014, plaintiff 's home flooded and she submitted a claim to her insurance company, which issued a series of checks jointly payable to plaintiff borrower and the bank. Plaintiff borrower endorsed the checks and turned them over to the bank.

Plaintiff disputed the amount she owed the contractor and filed a lawsuit against the contractor. Using her own money, plaintiff made the repairs. The bank refused to release any of the funds to pay for the additional repairs.

Plaintiff fell behind on her mortgage payments, and the bank accelerated her debt and referred her mortgage for foreclosure.

Plaintiff requested payoff statements from the bank. Neither payoff statement reflected the insurance proceeds.

Plaintiff brought a TILA class action, alleging that the bank breached its TILA obligation to provide her with an accurate payoff statement regarding her home mortgage. She subsequently settled with the contractor and the bank paid the contractor $4,000 and the additional insurance proceeds were applied to the past due balance on the mortgage.

The bank moved to dismiss, arguing that TILA does not require lenders to list insurance proceeds on payoff statements. An order denied the bank's motion, holding that "an accurate payoff statement should have deducted the insurance proceeds still held by the bank and at least should have added a note that the impounded funds potentially could be used for home repair in the event the loan was not paid off."

After the Supreme Court's decision in *Spokeo, Inc. v. Robins*, the Court here certified two classes.

The following class was certified to pursue damages only:

All borrowers with mortgages serviced and owned by Wells Fargo who, between June 23, 2014, and June 23, 2015, received payoff statements which failed to disclose property insurance claim funds.

The following class was certified to pursue declaratory relief only:

All borrowers with mortgages serviced and owned by Wells Fargo wherein Wells Fargo was holding insurance proceeds on June 22, 2016.

CASE LAW

Usury – NBA preemption

CASE NAME: *Midland Funding, LLC v. Madden*
DATE: *06/27/2016*
CITATION: *Supreme Court of the United States. 136 S.Ct. 1484 (Mem). 84 USLW 3523*

On June 27, 2016, the U.S. Supreme Court denied a petition for certiorari by Midland Funding, seeking to overturn the 2nd Circuit's decision in *Madden v Midland Funding, LLC*, United States Court of Appeals, Second Circuit. --- F.3d ----. 2015 WL 2435657.

In that case, as reported in the May 2015 McGlinchey Stafford Manufactured Housing Finance Law Update, the appeals court found that that third-party debt buyers are distinct from agents or subsidiaries of a national bank, and NBA preemption did not apply here, where Midland Funding acted solely on its own behalf, as the owner of the debt. The 2nd Circuit rejected Midland's argument that the National Bank Act's "valid when issued" doctrine applied to any debt that it purchased from a national bank.

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Madden had filed suit on behalf of herself and a putative class alleging the defendants had engaged in abusive and unfair debt collection practices in violation of the FDCPA and had charged a usurious rate of interest under New York law (limiting interest to 25% per year).

The case had been remanded to determine whether the Delaware choice-of-law provision contained in the Change In Terms precluded Madden's New York usury claims. Although raised below, the District Court did not reach this issue in ruling on the defendants' motion for summary judgment.

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.

PROPOSED RULE
Nevada
Voluntary surrender

Published 6/29/2016.

This rule would add a new section to Nev. Admin. Code § 489 to provide that any application for certificate of ownership for a home acquired through voluntary surrender in accordance of NRS 489.336 must be accompanied by an Affidavit of Voluntary Surrender on a form provided by the Division.

The rule amends Nev. Admin. Code § 489.760 to provide that "Licensee" means a landlord or manager of a mobile home park to whom a limited lien resale license (formerly, a limited resale license) is issued by the Division pursuant to NAC 489.780.

The rule would amend Nev. Admin. Code § 489.775 to add that before a landlord or manager of a mobile home park may sell a used mobile home or manufactured home acquired through a voluntary surrender by the legal owner of the mobile or manufactured home the landlord or manager must obtain a limited lien resale license from the Division. The section currently refers only to the requirement to have a license to sell a home to enforce a lien pursuant to NRS 108.265 to 108.367.

Nev. Admin. Code § 489.780 is to be amended to provide that a copy of the Affidavit of Voluntary Surrender, if applicable, must be submitted by a limited lien resale licensee to sell a used mobile home or manufactured home.

LEGISLATION
New York
Abandoned property maintenance

2015 NY S 8159. Enacted 6/23/2016. Effective 12/21/2016,

This bill enacts N.Y. Real Prop. Acts. Law § 1308, Inspecting, securing and maintaining vacant and abandoned residential real property, to apply to vacant and abandoned one to four family residential real property. Any duties and responsibilities so prescribed shall only apply to the first lien mortgage holder.

For each calendar year this section shall not apply to state or federally chartered banks, savings banks, savings and loan associations, or credit unions which: (1) originate, own, service and maintain their mortgages or a portion thereof; and (2) have less than three-tenths of one percent of the total loans in the state which they either originate, own, service, or maintain for the calendar year ending December thirty-first of the

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calendar year ending two years prior to the current calendar year. For any state or federally chartered banks, savings banks, savings and loan associations, or credit unions which originate, own, service and maintain between three-tenths of one percent and five-tenths of one percent of the total loans in the state which they either originate, own, service, or maintain for the calendar year ending December thirty-first of the calendar year ending two years prior to the current calendar year, the application of this section shall be prospective only.

Subject to bankruptcy filings, cease and desist orders, threats of violence, or active loss mitigation efforts, within ninety days of a borrower's delinquency, the servicer authorized to accept payment of the loan shall complete an exterior inspection of the subject property to determine occupancy. Thereafter, throughout the delinquency of the loan, the servicer shall conduct an exterior inspection of the property every twenty-five to thirty-five days, at different times of the day.

If a borrower is delinquent and subject to property inspections pursuant to the above, the servicer shall secure and maintain the residential real property where the servicer has a reasonable basis to believe that the residential real property is vacant and abandoned and is not otherwise restricted from accessing the property.

Within seven business days of determining that the property is vacant and abandoned, the servicer shall post a notice on an easily accessible part of the property that would be reasonably visible to the borrower, property owner or occupant, and monitor the property for any change in occupancy or contact with the borrower, property owner or occupant, and monitor to ensure that the notice remains posted so long as the duty to maintain applies. The posted notice shall provide the servicer's toll free number or similar contact information.

If the posted notice is not responded to or persists for seven consecutive calendar days without contact with the borrower, property owner or occupant indicating that the property is not vacant or abandoned, or if an emergent property condition that could reasonably damage, destroy or harm the property arises, the servicer shall take certain specified actions.

At no time shall a servicer remove personal property from the property unless:

(a) the personal property poses a significant health and safety issue; or

(b) there is an uncontested order to do so by a governmental entity.

A servicer who has determined a property to be vacant and abandoned and who has secured the same shall take reasonable and necessary actions to maintain the property until the earlier of specified events.

The bill defines reasonable and necessary actions to maintain the property.

Violations of this section may result in a civil penalty of up to five hundred dollars per day per property for each day the violation persisted.

The superintendent of financial services may, as appropriate and in his or her sole discretion, pursue any suspected violation of this section. Before taking such action, the superintendent shall give the lender, assignee or mortgage loan servicer at least seven days' notice of the violation.

In addition to the authority granted to the department of financial services, the municipality in which such residential real property is located shall have the right to enforce the obligations described.

A servicer who peacefully enters a vacant and abandoned property in order to maintain pursuant to this section shall be immune from liability when such servicer is making reasonable efforts to comply with the statute.

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For all state or federally chartered banks, savings banks, savings and loan associations, credit unions, or servicers for which the provisions of this section do not apply, pursuant to the opening paragraph of this section, any agreement between such state or federally chartered banks, savings banks, savings and loan associations, credit unions, or servicers and the department of financial services that is associated with the maintenance and repair of vacant and abandoned property shall remain in full force and effect between the aforementioned parties for so long as the terms and conditions of such agreement remain in effect.

No local law, ordinance, or resolution shall impose a duty to maintain vacant and abandoned property in a manner inconsistent with the provisions of this section.

The bill also enacts N.Y. Real Prop. Acts. Law § 1310, Vacant and abandoned property; statewide vacant and abandoned property electronic registry, to provide that a lender, assignee or mortgage loan servicer shall submit or cause to be submitted to the department of financial services information required by the superintendent of financial services about any vacant and abandoned residential real property within twenty-one business days of when the lender, assignee or mortgage loan servicer learns, or should have learned, that such property is vacant and abandoned.

The bill also makes amendments to provisions regarding the foreclosure process.

ADOPTED RULE
Nevada
Force-placed insurance

Effective 6/28/2016, amend Nev. Admin. Code § 686B.505 to require force-placed insurance rates and rules to be filed with the Commissioner of Insurance.

Provides that, as used in this section, "force-placed insurance" means single interest or dual interest insurance that is purchased by a creditor after a transaction:

(a) For coverage against loss, expense or damage to the property used as collateral as a result of fire, theft, collision or other risk of loss that would impair the interest of the creditor or adversely affect the value of the collateral;

(b) In accordance with the terms of the credit agreement as a result of the debtor's failure to provide the required insurance; and

(c) The cost of which is charged to the debtor.

ADOPTED RULE
Texas
Servicing notices

Effective 6/30/2016, amends 7 Tex. Admin. Code §§ 79.1, 79.2, rules pursuant to the Residential Mortgage Loan Servicer Registration Act.

Specifies that the rules relate to Residential Mortgage Loan Servicer registrants servicing residential mortgage loans on real estate located in Texas and provides that the required written notice to borrowers shall not be provided regarding the servicing of residential mortgage loans on real estate which is not located in Texas.

Provides that registrants servicing residential mortgage loans on real estate located in Texas shall also post the required disclosure on their website, with a statement to reflect that such disclosure notice only applies to the residential mortgage loans on real estate located in Texas.

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INSTALLATION

CASE LAW

Insurance – Duty to defend

CASE NAME: *Lightening Rod Mut. Ins. Co. v. Southworth*
DATE: *06/16/2016*
CITATION: *Court of Appeals of Ohio, Fourth District, Scioto County. Slip Copy. 2016 WL 3364964*

The Beatties entered into a purchase agreement with CMH for a new mobile home manufactured by Skyline Corporation. According to the Beatties, due to alleged "substandard, defective, and/or negligent manufacture, delivery, and installation," the home began experiencing structural problems of a continuing nature, including cracks in the drywall and the ceiling at the marriage line. Specifically, the structural defects first manifested in early 2008, almost immediately after taking occupancy, and continued through 2014 and beyond.

CMH and Skyline made several attempts to repair the problems, however, the problems persisted and reoccurred throughout 2008 and beyond.

The Beatties filed suit against Skyline, CMH, and Vanderbilt Mortgage and Finance, Inc., seeking money damages under multiple theories of liability.

CMH filed a third-party complaint against Bob's Home Services, LLC, alleging that it was the company that actually performed the installation of the home, and seeking indemnification and contribution from Bob's. Bob's tendered the claim to Lightning Rod and demanded a defense under the Policy. Subsequently, Lightning Rod determined that Bob's did not qualify for coverage under the Policy, and asked the Court to determine the rights and obligations of the parties to the insurance contract Lightning Rod first issued the Policy at issue for the period November 26, 2008, to November 26, 2009. The Policy was renewed annually, three times, remaining in effect until November 26, 2012.

The trial court entered summary judgment in favor of Lightning Rod.

CMH appealed, contending that, although it was undisputed that the home was installed and property damage first occurred before the effective date of the Policy, coverage was nevertheless "triggered" by the reoccurrence of property damage during the policy period.

The appeals court found that, based on the plain language of the Policy, these claims did not fall within Policy coverage. A continuation or resumption of the same damages was not sufficient to bring the claims within Policy coverage.

Affirmed.

LICENSING

LEGISLATION

Hawaii

Mortgage loan servicers

2015 HI S 2850. Enacted 6/22/2016. Effective 7/1/2016.

The purpose of this Act is to make various amendments to the mortgage loan originators law, chapter 454F, Hawaii Revised Statutes, and the mortgage servicers law, chapter 454M, Hawaii Revised Statutes. This measure clarifies the scope of activities subject to each of the two chapters, which regulate related industries, including by moving mortgage servicer provisions that currently appear in chapter 454F to chapter 454M and deleting provisions and references relating to servicer companies currently in chapter 454F as this class of licenses are regulated entirely under chapter 454M.

The bill adds a new section to Chapter 454M, re: mortgage servicers, to provide that the commissioner is

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authorized to enter into agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, or other associations representing governmental agencies as established by rule or order of the commissioner.

The bill adds new definitions to Haw Rev. Stat. Ann. § 454F-1, under the Hawaii SAFE Act,, including:

"Dwelling" means a residential structure or mobile home that contains one to four family housing units or individual units of condominiums or cooperatives; and

"Mortgage servicer" means a person licensed or required to be licensed under chapter 454M."

Also amends definitions, including:

"Borrower" means the obligor, maker, cosigner, or guarantor under a residential mortgage loan agreement. For purposes of this chapter, a borrower is included in the term consumer (formerly, a person who has applied for or obtained a residential mortgage loan from or through a licensed mortgage loan originator or mortgage loan originator company or from a person required to be licensed as a mortgage loan originator or mortgage loan originator company under this chapter).

"Licensee" means a person who is licensed or required to be licensed under this chapter. Licensee does not include an exempt registered mortgage loan originator, exempt sponsoring mortgage loan originator company, or nonprofit organization as defined by this section (formerly, a mortgage loan originator, a mortgage loan originator company, a mortgage servicer company, unless exempt under chapter 454M, or a person who is licensed under this chapter. Licensee does not include an exempt registered mortgage loan originator, exempt sponsoring mortgage loan originator company, or nonprofit organization as defined by this section).

"Residential mortgage loan" or "mortgage loan" means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or residential real estate. upon which is constructed or intended to be constructed a dwelling, and includes refinancings, reverse mortgages, home equity lines of credit, and other first and additional lien loans that meet the qualifications listed in this definition (adding, upon which is constructed or intended to be constructed a dwelling, and includes refinancings, reverse mortgages, home equity lines of credit, and other first and additional lien loans that meet the qualifications listed in this definition) .

"Residential loan modification" or "loan modification" means a temporary or permanent change to the terms of a borrower's existing residential mortgage loan agreement, mutually agreed to between a borrower and a lender. Formerly, the definition provided "Residential mortgage loan modification means:

(1) Modification of existing residential mortgage loans which generally includes a change in interest, principal, or term of loan; or

(2) The processing of the approval of loan assumptions.

"Residential mortgage loan modification" does not include origination of mortgage loans."

The bill also deletes the definitions of "loan modification" and "mortgage servicer company".

Amends Haw. Rev. Stat. Ann. § 454F-1.5 to provide that all mortgage loan originators, mortgage loan originator companies, exempt registered mortgage loan originators, exempt sponsoring mortgage loan originator companies, nonprofit organizations, and every other person in this State that originates a residential mortgage loan, unless exempt under section 454F-2, shall register with NMLS. Prior to amendment, this list included mortgage servicer companies.

The bill amends Haw. Rev. Stat. Ann. § 454F-1.6 to provide that an individual is presumed to control a mortgage loan originator company (formerly, or a mortgage servicer company) if that individual is a

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director, general partner, managing member, or executive officer who directly or indirectly has the right to vote ten per cent or more of a class of voting securities or has the power to sell or direct the sale of ten per cent or more of a class of voting securities of that. licensee or applicant (formerly, that mortgage loan originator company or mortgage servicer company).

The bill deletes references to mortgage servicer companies in Haw. Rev. Stat. Ann. §§ 454F-8, Standards for license renewal, 454F-10, Authority to require license, 454F-22 Mortgage loan originator, mortgage loan originator company, exempt sponsoring mortgage loan originator company, and nonprofit organization fees, 454F-24 Limited exemption for mortgage loan originators employed by mortgage servicers (formerly, Mortgage servicer companies; mortgage loan originators),

Haw. Rev. Stat. Ann. § 454F-17 has been amended to provide that it is a prohibited practice to solicit or enter into any contract with a borrower or an applicant for a residential mortgage loan that provides in substance that the person or individual subject to this chapter may earn a fee or commission through "best efforts" to obtain a residential mortgage loan even though no loan is actually obtained for the borrower; or applicant for a residential mortgage loan (adding the distinction between a borrower and an application – see amendments to Haw Rev. Stat. Ann. § 454F-1, above).

The bill amends Haw. Rev. Stat. Ann. § 454M-1 by adding definitions, including:

"Affiliated entity" means a person or other entity that is controlled, controlled by, or under common control with a developer;

"Control" means the power to direct management or policies of a company, whether through ownership of securities, by contract, or otherwise;

"Dwelling" means a residential structure or mobile home that contains one to four family housing units or individual units of condominiums or cooperatives; and

"Residential real estate" means any real property located in this State, upon which a dwelling is constructed or intended to be constructed.

The bill specifies that Residential loan modification" or "loan modification" means a temporary or permanent change to the terms of a borrower's existing residential mortgage loan agreement (adding, residential).

The bill also amends the definition of "Residential mortgage loan" or "mortgage loan" to mean any loan, primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or residential real estate and includes refinancings, reverse mortgages, home equity lines of credit, and other first and additional lien loans that meet the qualifications listed in this definition."

Formerly, "Residential mortgage loan" meant a mortgage loan, home equity loan, or reverse mortgage loan, that is secured by a first or subordinate lien on residential real property located in Hawaii, including a refinancing of any secured loan on residential real property located in Hawaii, upon which:

(1) There is or will be constructed a structure or structures designed principally for occupancy by one to four families, including individual units of condominiums and cooperatives; or

(2) A manufactured home is located or will be placed on the real property, using proceeds of the loan.

The bill amends Haw. Rev. Stat. Ann. § 454M-2, License required, to delete the provision that no person licensed as a mortgage servicer shall provide mortgage loan modifications or any other services that would require licensing pursuant to chapter 454F without first complying with the licensure requirements under chapter 454F.

The bill amends Haw. Rev. Stat. Ann. § 454M-4 to provide that a licensee may apply for license renewal by

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filing a renewal statement on a form prescribed by NMLS or by the commissioner and paying a renewal fee of $425, $600 (formerly, $425), at least four weeks prior to December 31.

The bill adds that the minimum standards for license renewal shall include the following:

(1) The licensee continues to meet the minimum standards for licensure established pursuant to this section;

(2) The licensee has paid all required fees for renewal of the license; and

(3) The licensee is registered with the business registration division of the department of commerce and consumer affairs.

The bill further provides that a mortgage servicer that changes its name or the address of any of its branches must pay a fee of $100 and any fees charged by NMLS.

Haw. Rev. Stat. Ann. § 454M-8.5 has been amended to provide that each licensee or person subject to the Chapter shall provide to the commissioner upon request the books and records relating to the operations of the licensee or person. The commissioner shall have access to the books and records of a licensee and shall be permitted to interview the officers, principals, mortgage servicers (formerly, mortgage loan originators) employees, independent contractors, agents, and customers of the licensee (formerly, licensed mortgage loan originator) or person subject to this chapter concerning their business.

LEGISLATION

Michigan

Debt collectors

2015 MI S 657. Enacted 6/8/2016. Effective 9/6/2016.

This bill amends the "Occupational Code," Mich. Comp. Laws § 339.901 by amending the definition of “collection agency” to provide that it means a person that is directly engaged (formerly, directly or indirectly engaged) in collecting or attempting to collect a claim owed or due or asserted to be owed or due another, or, subject to subsection (2), repossessing or attempting to repossess a thing of value owed or due or asserted to be owed or due another arising out of an expressed or implied agreement. Collection agency includes an individual (formerly, a person) who, in the course of collecting, repossessing, or attempting to collect or repossess, represents himself or herself as a collection or repossession agency, or a person that performs collection activities that are regulated under this article on behalf of another. Collection agency also includes a person that furnishes or attempts to furnish a form or a written demand service represented to be a collection or repossession technique, device, or system to be used to collect or repossess claims, if the form contains the name of a person other than the creditor in a manner that indicates that a request or demand for payment is being made by a person other than the creditor even though the form directs the debtor to make payment directly to the creditor rather than to the other person whose name appears on the form. Collection agency also includes a person that uses a fictitious name or the name of another in the collection or repossession of claims to convey to the debtor that a third person is collecting or repossessing or has been employed to collect or repossess the claim.

The bill adds an exemption for a forwarding agency that, acting on behalf of a creditor or lender, forwards a claim, collection, or repossession only to a licensed collection agency that is licensed or to a person whose collection activities are excluded or exempted from licensing.

The bill provides that “creditor” or “principal” means a person that offers or extends credit creating a debt or a person to which a debt is owed or due or asserted to be owed or due (adding, or asserted to be owed or due).

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The bill adds that as used in the Act, “collecting or attempting to collect a claim”, “repossessing or attempting to repossess a thing of value”, and “collection activities” do not include any of the following activities of a claim forwarder or remarketer pursuant to a contract with a creditor:

(a) Forwarding repossession assignments on behalf of the creditor to a collection agency that is licensed for repossessing or attempting to repossess a thing of value owed or alleged to be owed on a claim.

(b) Pursuant to the authorization of a creditor and on the creditor’s behalf, providing or procuring the services of an auction or other remarketer in connection with the disposition or preparation for disposition of a thing of value that was previously repossessed by a creditor or by another person on behalf of the creditor.

(c) Communicating with a creditor or the collection agency regarding the performance of any of the activities described in subdivision (a) or (b).

LEGISLATION
Michigan
Debt collectors

2015 MI S 656. Enacted 6/8/2016. Effective 9/6/2016.

This bill amends the “Regulation of Collection Practices” Mich. Comp. Laws § 445.251 by amending the definition of “collection agency” to provide that it means a person that is directly engaged in collecting or attempting to collect a claim owed or due or asserted to be owed or due another (formerly, a person directly or indirectly engaged in soliciting a claim for collection or collecting or attempting to collect a claim owed or due or asserted to be owed or due another), or repossessing or attempting to repossess a thing of value owed or due or asserted to be owed or due another person, arising out of an expressed or implied agreement. Collection agency includes an individual who, in the course of collecting, repossessing, or attempting to collect or repossess, represents himself or herself as a collection or repossession agency, or a person that performs collection activities that are regulated under article 9 of the occupational code, 1980 PA 299, MCL 339.901 to 339.920 (formerly, a person representing himself or herself as a collection or repossession agency or a person performing the activities of a collection agency, on behalf of another, which activities are regulated by Act No. 299 of the Public Acts of 1980, as amended, being sections 339.101 to 339.2601 of the Michigan Compiled Laws). Collection agency includes a person that furnishes or attempts to furnish a form or a written demand service that is represented to be a collection or repossession technique, device, or system to be used to collect or repossess claims, if the form contains the name of a person other than the creditor in a manner that indicates that a request or demand for payment is being made by a person other than the creditor even though the form directs the debtor to make payment directly to the creditor rather than to the other person whose name appears on the form. Collection agency includes a person that uses a fictitious name or the name of another in the collection or repossession of claims to convey to the debtor that a third person is collecting or repossessing or has been employed to collect or repossess the claim.

The bill adds that, as used in this act, “collecting or attempting to collect a claim”, “repossessing or attempting to repossess a thing of value”, and “collection activities” do not include any of the following activities of a claim forwarder or remarketer pursuant to a contract with a creditor:

(a) Forwarding repossession assignments on behalf of the creditor only to a licensed collection agency that is licensed under article 9 of the Occupational Code, 1980 PA 299, MCL 339.901 to 339.920, for repossessing or attempting to repossess a thing of value owed or alleged to be owed on a claim.

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(b) Pursuant to the authorization of a creditor and on the creditor's behalf, providing or procuring the services of an auction or other remarketer in connection with the disposition or preparation for disposition of a thing of value that was previously repossessed by a creditor or by another person on behalf of the creditor.

(c) Communicating with a creditor or the collection agency regarding the performance of any of the activities described in subdivision (a) or (b).

LEGISLATION

New Hampshire

Mortgage loan servicers

2015 NH H 1685. Enacted 6/21/2016. Effective 8/20/2016.

This bill repeals N.H. Rev. Stat. Ann. §§ 397-B:1 – 397-B:12 regarding the Regulation of Mortgage Loan Servicers, and includes Mortgage Loan Servicers under N.H. Rev. Stat. Ann. §§ 397-A:1 et seq., formerly, Licensing of Nondepository First Mortgage Bankers and Brokers; now, Licensing Of Nondepository Mortgage Bankers, Brokers, And Servicers.

The bill amends N.H. Rev. Stat. Ann. § 397-A:1 by adding the definition of "Engaged in the business of" as meaning to act or hold oneself out as acting in a commercial context and with some degree of habitualness or repetition.

The definition of "First mortgage loan" has been amended to provide that it includes the renewal or refinancing of an existing first mortgage loan (formerly, this included the modification of an existing first mortgage loan).

The bill includes mortgage servicer in the definition of "licensee, "and provides that "Mortgage servicing company" or "mortgage servicer" means an individual, partnership, corporation, association, or other entity however organized and wherever located which, for itself or on behalf of the holder of a mortgage loan, holds the servicing rights or records such payments on its books and records and performs such other administrative functions as may be necessary to properly carry out the mortgage holders obligations under the mortgage agreement including, when applicable, the receipt of funds from the mortgagor to be held in escrow for payment of real estate taxes and insurance premiums and the distribution of such funds to the taxing authority and insurance company.

The bill provides that "Originator" or "mortgage loan originator" or "mortgage originator" or "loan originator" does not include an individual engaged solely in loan modification activities not resulting in a new extension of credit.

The bill deletes the provision that "Second mortgage loan" includes the modification of a second mortgage loan.

N.H. Rev. Stat. Ann. § 397-A:2 has been amended to provide that the chapter shall provide for the department's regulation of persons that engage in the business of a mortgage banker, mortgage broker, mortgage servicer, or mortgage originator for a mortgage loan from the state of New Hampshire or a mortgage loan secured by real property located in the state of New Hampshire. The following persons are not considered to be engaged in the business of activities requiring regulation under the Chapter:

(a) An individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual.

(b) An individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence.

(c)(1) An attorney licensed in New Hampshire performing activities that are within the definition of a loan originator, provided that such activities are:

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(A) Considered by the New Hampshire supreme court to be part of the authorized practice of law within New Hampshire;

(B) Carried out within an attorney-client relationship; and

(C) Accomplished by the attorney in compliance with all applicable laws, rules, ethics, and standards.

Any mortgage loan made, brokered, or serviced under the provisions of this chapter shall be further governed by any other applicable laws of the state of New Hampshire and by the Consumer Credit Protection Act (15 U.S.C. Section 1601 et seq.), as amended.

Persons subject to or licensed under the Chapter shall abide by applicable federal laws and regulations, the laws and rules of New Hampshire, and the orders of the commissioner. Any violation of such law, regulation, order, or rule is a violation of this chapter. Such federal laws and regulations include but are not limited to the Bank Secrecy Act (BSA), 31 U.S.C. Section 5311 et seq. and 31 C.F.R. Part X et seq. when required by the BSA, and include interpretive orders and similar directives.

Any condition, stipulation, or provision binding any person to waive compliance with any provision of this chapter or any rule or order under this chapter is void.

The bill amends N.H. Rev. Stat. Ann. § 397-A:3 to require a license for a mortgage loan servicer and to provide that a person licensed as mortgage banker may act as a mortgage servicer without obtaining a separate license. Note that a mortgage servicer, like a mortgage banker or broker, must be licensed it its home state.

The bill provides that an originator's license is only in effect when such originator is employed or retained by a licensed mortgage banker, mortgage broker, or mortgage servicer or by a person exempt from this chapter that has registered or made a filing as an exempt entity on the Nationwide Mortgage Licensing System.

A person located outside of the United States and required to be licensed under this chapter shall maintain a location within the continental United States where records of all New Hampshire transactions are kept and from where all activity under this chapter shall be conducted.

NOTE - The bill provides that a branch office of a mortgage banker or mortgage broker shall be licensed prior to conducting business at such location – branches of mortgage servicers are not mentioned.

The bill amends N.H. Rev. Stat. Ann. § 397-A:3-a to add that a mortgage banker, mortgage broker, or mortgage servicer shall not employ, retain, or otherwise engage an originator unless the originator is licensed.

N.H. Rev. Stat. Ann. § 397-A:4 has been amended to delete the exemption for a person who is not the owner of the real property in question, and any affiliate of the person who collectively make 3 or fewer mortgage loans in a 12 consecutive month period, provided that:

(a) The person or affiliate of the person does not act as an originator;

(b) All origination activities are conducted by an originator duly licensed in this state;

(c) Only the licensed mortgage banker or broker that employs or retains the originator is directly or indirectly compensated by the person or the affiliate of the person; and

(d) Only the licensed mortgage banker or broker that employs and retains the originator may directly or indirectly compensate the originator.

The bill also amends N.H. Rev. Stat. Ann. § 397-A:5 to require a $100,000 surety bond for a mortgage servicer license. Formerly, a mortgage servicer registration required a $50,000 bond.

The bill further provides that the contact person for a mortgage banker or mortgage servicer shall be a control

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person who shall have authority to facilitate foreclosure workouts, and foreclosure avoidance procedures.

The bill amends N.H. Rev. Stat. Ann. § 397-A:9 to delete its former subject, License Posting, and replace it with provisions regarding Escrow Accounts.

N.H. Rev. Stat. Ann. § 397-A:10-a has been amended to provide that surrender of a license shall not take effect until the commissioner deems the surrender process complete.

The bill a N.H. Rev. Stat. Ann. § 397-A:11 to provide that a licensee may maintain its records in electronic format if, upon request, the licensee provides the commissioner with:

(a) A full explanation of the programming of any data storage or communications systems in use; and

(b) Information from any books, records, electronic data processing systems, computers, or any other information storage system in the form requested by the commissioner.

The bill amends N.H. Rev. Stat. Ann. § 397-A:13, formerly, Annual Report; now, Reporting, to require reports of condition through NMLS, instead of the filing, under oath, an annual report with the banking department on or before March 31 each year.

However, a financial statement is still due within 90 days from the date of the licensee's fiscal year end.

The bill provides that any mortgage banker, mortgage broker, or mortgage servicer failing to file the mortgage call report required within the time prescribed may be required to pay to the department a penalty of $25 for each calendar day the mortgage call report is overdue up to a maximum penalty of $625 per mortgage call report.

The bill amends N.H. Rev. Stat. Ann. § 397-A:14 to add that licensees shall ensure that the Nationwide Mortgage License System and Registry unique identifier of any person originating a residential mortgage loan shall be clearly shown on the residential mortgage loan application, note, security instrument and any other documents as may be established by rule, regulation, or order of the commissioner.

N.H. Rev. Stat. Ann. § 397-A:14-a has been amended to provide that licensees shall ensure that the Nationwide Mortgage License System and Registry unique identifier of any person originating a residential mortgage loan shall be clearly shown on all residential mortgage loan application forms, solicitations or advertisements, including business cards or websites, and any other documents as established by rule, regulation, or order of the commissioner.

Formerly, such communications were required to include: "Licensed by the New Hampshire banking department."

The bill amends N.H. Rev. Stat. Ann. § 397-A:15 to provide that persons who fail to provide a net payoff amount within 5 days of receipt of a written request shall be assessed a fine of $100 per day up to a maximum penalty of $2500 per violation.

Also amended is N.H. Rev. Stat. Ann. § 397-A:16. Lender's Rights and Broker's Rights, regarding a lender's disclosures with respect to fees.

The bill also makes amendments to N.H. Rev. Stat. Ann. §§ 397-A:17, Violations, 397-A:18, Order to Show Cause, 397-A:19, Cease and Desist, 397-A:20. Penalties, 397-A:21, Receivership; Liquidation, 397-A:22, Administration by Commissioner; Rulemaking, and 397-A:23, Severability.

PROPOSED RULE
Virginia
Contractors – Verification of experience/education

Proposed rule. Published 6/27/2016.

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This rule would amend 8 Va. Admin. Code §§ 50-22-10, -40, -50, -60, -220, -230, -310.

The amendments would require that applicants for a Contractor's License provide verification of the required minimum experience and employment.

For a specialty in manufactured home contracting, the rule requires completion of a U.S. Department of Housing and Urban Development or Department of Housing and Community Development approved installers course.

RECORDING

LEGISLATION

Colorado

Electronic filing surcharge

2016 CO S 115. Enacted 6/10/2016. Effective immediately.

This bill enacts Colo. Rev. Stat. §§ 24-21-401 through 24-21-407 to establish, until 9/1/2022, the Electronic Recording Technology Board and provides that the board may impose an electronic filing surcharge of up to two dollars that is uniformly collected on all documents received by a county clerk and recorder for recording or filing on or after January 1, 2017, through December 31, 2021.

The bill amends Colo. Rev. Stat. § 30-10-409(5), Reception book - form - contents - acceptance for recording, to provide that a clerk and recorder who decides to accept electronic filings shall establish procedures for such electronic filings that are consistent with any standards or rules established by the Electronic Recording Technology Board (formerly, consistent with the rules promulgated by the secretary of state pursuant to section 30-10-424 – which has been repealed by this bill).

The bill also amends Colo. Rev. Stat. § 30-10-421, Filing surcharge – definitions, to provide that, beginning January 1, 2017, and through December 31, 2021, the county clerk and recorder shall collect the surcharge imposed by the Electronic Recording Technology Board under Colo. Rev. Stat. § 24-21-403 (2), for each document received for recording or filing in his or her office. The surcharge is in addition to any other fees permitted by statute.

SALES AND WARRANTIES

CASE LAW

Habitability – Federal issues

CASE NAME: *Perez v. Jacobsen Manufacturing, Inc.*
DATE: *06/15/2016*
CITATION: *United States District Court, M.D. Florida, Tampa Division. Slip Copy. 2016 WL 3344671*

Plaintiff contended that the manufacturer of manufactured homes, Jacobsen, installed vinyl siding directly to the oriented strand board, which served as the exterior walls. According to Plaintiff, the vinyl siding was not "moisture and weather resistive materials attached with corrosion resistant fasteners to resist wind, snow and rain" as required by 24 C.F.R. § 3280.307(a). Moreover, Jacobsen failed to install any moisture and weather resistive "housewrap," or any other moisture and weather resistive materials to prevent moisture from getting in the wall assembly.

Plaintiff alleged that the home suffered from moisture and water damage, including mold, mildew, and structural damage and that Defendants failed and/or refused to replace or remediate the exterior wall coverings of the manufactured home. Plaintiff contended that Defendants' actions were unfair and deceptive because Defendants falsely represented to their customers that the manufactured homes complied with federal regulations like 24 C.F.R. § 3280.307(a).

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Jacobsen removed the case, asserting that the federal court had original jurisdiction under federal question jurisdiction because Plaintiff's claims under the Florida Deceptive and Unfair Trade Practices Act required "resolution of a substantial question of federal law in dispute between the parties."

Plaintiff moved to remand.

The Court concluded that it does not have subject matter jurisdiction over this action because Defendants had not shown that the federal issues in the case were substantial. Defendants also did not show that recognizing federal question jurisdiction over this case would not disrupt the balance struck by Congress between state and federal judicial responsibilities.

ADOPTED RULE
Kentucky
Disclosure of property condition

Effective 5/16/2016, this rule amends 201 Ky. Admin. Regs. 11:350, Seller's disclosure of property conditions form.

The rule adds the definition of "single family residential real estate dwelling" to mean any:

(1) Duplex, triplex, fourplex; condominium, townhouse, or residential unit;

(2) Manufactured home permanently attached to land; or

(3) Residential unit otherwise conveyed on a unit by unit basis, even if the unit is part of a larger building or parcel of real estate containing more than four (4) residential units.

The rule provides that the Seller's Disclosure of Property Condition form shall be completed and signed by the seller of a single family residential real estate dwelling, as required by KRS 324.360, upon execution of the listing agreement or a similar agreement by which a licensee intends to market the property.

The Seller's Disclosure of Property Condition form shall also include:

(a) Whether or not the single family residential real estate dwelling is located within a special flood hazard area as identified in 44 C.F.R. 64.3(b) mandating the purchase of flood insurance for federally backed mortgages (Zones A, A130, AE, A99, AO, AH, AR, AR/A130, AR/AE, AR/AO, AR/AH, AR/A, V130, VE, V, VO, M, and E);

(b) Contact information for any homeowner's association; and

(c) Notice of the written disclosure of methamphetamine contamination required by KRS 224.1410(10) and 902 KAR 47:200.

(2) If the property that is the subject of the Seller's Disclosure of Property Condition form is listed, the listing agent shall solicit the initials of all property owners/sellers and the date and time for the initialing at the time he or she executes any listing agreement or similar agreement by which a licensee intends to market the property.

(3) If the property that is the subject of the Seller's Disclosure of Property Condition form is not listed, any licensee involved in the transaction shall solicit:

(a) The initials of all property owners/sellers and the date and time for the initialing; and

(b) The initials of all prospective buyers and the date and time for initialing.

The rule provides for the incorporation by Reference of (1) "Seller's Disclosure of Property Condition", 3/2016 edition.

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TITLING AND PERFECTION

LEGISLATION
Louisiana
Conveyance

2016 LA H 956. Enacted 5/26/2016. Effective 8/1/2016.

This bill amends La. Stat. Ann. § 9:2721 to provide that an act of conveyance (formerly, an act of sale) of immovable property or attachment thereto filed for registry in the office of the parish recorder pursuant to Subsection A of this Section shall designate the name of the person responsible for all property taxes and assessments and include the address where property tax and assessment notices are to be mailed.

The bill repeals La. Civ. Code Ann. art. 3275, which provided that, in addition to any other requirement that may be provided by general or special law, every act or other document evidencing a privilege that is filed for recordation shall contain the date of birth of all parties named in the act or document.

LEGISLATION
North Carolina
Security interests

2015 NC H 870. Enacted 6/30/2016. Effective 7/1/2017, except as noted.

This bill amends the definition of "vehicle" in N.C. Gen. Stat. § 20-4.01 to provide that unless the context requires otherwise, and except as provided under N.C. Gen. Stat. §§ 20-109.2, 47-20.6, or 47-20.7, a manufactured home shall be deemed a vehicle.

The bill amends N.C. Gen. Stat. § 20-58 to provide that an application for the notation of a security interest on a certificate of title for a manufactured home shall state the maturity date of the secured obligation.

The bill also adds N.C. Gen. Stat. § 20-58.3A, Automatic expiration of security interest in manufactured home; renewal of security interests in manufactured homes.

This new section provides that, with the exception of a security interest in a manufactured home perfected pursuant to G.S. 20-58(c), unless satisfied pursuant to G.S. 20-58.4 or G.S. 20-109.2, the perfection of a security interest in a manufactured home that is perfected by a notation on the certificate of title shall automatically expire 30 years after the date of the issuance of the original certificate of title containing the notation of the security interest, unless a different maturity date is stated on the title.

Unless satisfied pursuant to G.S. 20-58.4 or G.S. 20-109.2, the perfection of a security interest in a manufactured home perfected by a notation on the certificate of title pursuant to G.S. 20-58(c) shall automatically expire as follows:

(1) If the perfection of the security interest has not been renewed as provided in this section, on the earlier of (i) 90 days after the maturity date stated on the application for the security interest or (ii) 15 years plus 180 days after the date of issuance of the original certificate of title containing the notation of the security interest.

(2) If the perfection of the security interest has been renewed as provided in this section, on the earlier of (i) 10 years after the date of the renewal of the perfection of the security interest, (ii) 90 days after the original maturity date of the security interest, if the original maturity date has not been extended, or (iii) 90 days after any extended maturity date stated on the application of renewal.

Prior to the date that perfection of a secured party's security interest in a manufactured home automatically expires pursuant to the above, the secured party may deliver to the Division an application for renewal of the perfection of the secured party's security interest. The application for the renewal of the perfection of the

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secured party's security interest shall be in a form prescribed by the Division.

An application for the renewal of a secured party's security interest pursuant to this section shall be effective to renew the perfection of the security interest as of the date the application is delivered to the Division. Each renewed security interest shall retain its original date of perfection and the perfection shall thereafter expire on the earlier to occur of (i) 10 years after the date of renewal of the perfection of the security interest, (ii) 90 days after the original maturity date of the security interest, if the original maturity date has not been extended, or (iii) 90 days after any extended maturity date stated on the application of renewal. Perfection of a security interest in a manufactured home may be renewed more than once pursuant to this section.

The bill amends N.C. Gen. Stat. § 20‑58.4. Release of security interest, to provide that the owner of a manufactured home may provide the Division with a sworn affidavit by the owner that the debt has been satisfied and that either:

(1) After diligent inquiry, the owner has been unable to determine the identity or the current location of the secured creditor or its successor in interest; or

(2) The secured creditor has not responded within 30 days to a written request from the owner to release the secured creditor's security interest.

N.C. Gen. Stat. § 20‑85 has been amended to provide that the fee for an application for renewing a security interest on a certificate of title or removing a lien or security interest from a certificate of title is $20.

Effective 8/1/2016, the bill amends N.C. Gen. Stat. § 20‑109.2 to provide that if the owner of a manufactured home whose certificate of title has been cancelled seeks to separate the manufactured home from the real property, the owner's affidavit to the Division must include verification of the identity of the current owner of the real property upon which the manufactured home was located. Upon receipt of the required information, together with a title application and required fee, the Division shall issue a new title for the manufactured home in the name of the current owner of the real property upon which the manufactured home was located.

The bill amends N.C. Gen. Stat. § 153A 357(e), regarding Counties and permits for the construction, reconstruction, alteration, repair, movement to another site, removal, or demolition of any building.

The law currently provides that no permit shall be issued where the cost of the work is thirty thousand dollars ($30,000) or more, other than for improvements to an existing single family residential dwelling unit as defined in G.S. 87 15.5(7) that the owner occupies as a residence, or for the addition of an accessory building or accessory structure as defined in the North Carolina Uniform Residential Building Code, the use of which is incidental to that residential dwelling unit, unless the name, physical and mailing address, telephone number, facsimile number, and electronic mail address of the lien agent designated by the owner pursuant to G.S. 44A 11.1(a) is conspicuously set forth in the permit or in an attachment thereto. The building permit may contain the lien agent's electronic mail address. The lien agent information for each permit issued pursuant to this subsection shall be maintained by the inspection department in the same manner and in the same location in which it maintains its record of building permits issued.

The bill adds that where the improvements to a real property leasehold are limited to the purchase, transportation, and setup of a manufactured home, as defined in G.S. 143 143.9(6), for which there is a current certificate of title, the purchase price of the manufactured home shall be excluded in determining whether the cost of the work is thirty thousand dollars ($30,000) or more.

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The bill makes a similar amendment to N.C. Gen. Stat. § 160A-417(d), regarding Cities and Towns.

LEGISLATION
South Carolina
Liens

2015 SC H 5089. Enacted 6/5/2016. Effective 2/1/2017, however, the act's implementation shall be one hundred eighty days after its effective date.

This bill amends S.C. Code Ann. § 56-19-265 to provide that any liens or encumbrances on a motor vehicle or titled mobile home must be noted on the printed title or electronically through the Department of Motor Vehicles' Electronic Title and Lien System. The department shall transmit the lien to the first lienholder and notify the first lienholder of additional liens. This transmittal must be done electronically for business entities or by paper certificate for nonbusiness entities (persons purchasing vehicles for personal use from persons selling vehicles they have used primarily for personal use).

The bill provides that all fees charged by the department to any party as to a titled motor vehicle, motor home, or mobile home for purposes of transmittal or retrieval of this data is an "official fee" as referenced in Sections 37-2-202 and 37-3-202.

The bill adds that all businesses and commercial lienholders who are regularly engaged in the business or practice of selling motor vehicles as dealers licensed under Chapter 15 of this title or in the business or practice of financing motor vehicles shall utilize the electronic lien system to transmit and receive electronic lien information as described by subsection (A). The department shall maintain contact information on its website for service providers providing an electronic interface between the department, lienholders and sellers of motor vehicles. The department may establish procedures to ensure businesses comply with use of the electronic lien system and to deal with valid exceptions as determined by the department.

Finally, the bill adds that any lien upon a vehicle titled by the State, except upon vehicles defined as motor homes, mobile homes, special mobile equipment, or commercial trucks, shall be deemed effective for a period of twelve years from the date the lien was perfected. The effectiveness of the lien lapses at the end of this twelve-year period unless a continuation statement is filed pursuant to this subsection by the entity existing on the current title as lienholder using the application process acceptable by the Department of Motor Vehicles. The department shall publish forms for the purpose of filing a continuation statement. The lienholder shall not make application for lien continuation until no more than six months prior to lien expiration. Upon a timely filing of a continuation statement in accordance with this subsection, the lien will be effective for a period of two additional years from the date of the filing of the continuation statement. The responsibility of lien continuation lies with the lender. The twelve-year effective lien period refers to the age of the lien, not the age of the vehicle.

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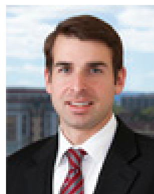

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