McGLINCHEY STAFFORD

MHI Manufactured Housing Institute

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

WELCOME!

Ah, October. The World Series, changing leaves, and, for those of you with young children, the endless celebration that is Halloween. We're still on a sugar high over here. Will this month's *Update* be a trick-or-treat for the manufactured housing industry?

Most states were as silent as the grave in October, with the notable exception of California. California decided to pass legislation concerning immigration, accessory units, solar energy, home sharing, and a waiver program for unpaid taxes related to manufactured housing. California's governor also issued an Executive Order concerning the California wildfires that directly affects manufactured housing. While some developments in California are undoubtedly positive, this editor sheds a tear at having to review even more manufactured housing statutes in California.

For those not feeling California's "good vibrations", this edition has some fun formaldehyde rules from the EPA, some HUD proposed rules, and a CFPB proposed rule. Not to miss is a discussion concerning vanderlism. Yes, we spelled that right.

We hope that this doesn't scare you away! Happy Reading!.

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ARBITRATION

CASE LAW

Ripeness - Venue

CASE NAME: *CMH Homes, Inc. v. Pyke*
DATE: *09/28/2017*
CITATION: *United States District Court, S.D. Mississippi, Eastern Division. Slip Copy. 2017 WL 4322435*

The Pykes purchased a manufactured home from CMH Homes, Inc. and Southern Energy Homes, Inc. One of the agreements signed by parties at the time of purchase was a Binding Dispute Resolution Agreement. Shortly after purchase, Defendants contacted Plaintiffs concerning the condition of the home after delivery. Subsequently, Plaintiffs filed a Petition seeking an order compelling arbitration. Defendants challenged the ripeness of the suit and the venue.

The Court found that the dispute Plaintiffs sought to have arbitrated centered around the purchase of a manufactured home and the accompanying warranties and agreements. That transaction had been completed, and the home was subsequently delivered to Defendants. The dispute concerned the condition of the home and Plaintiffs' obligations to Defendants stemming from the agreements made at the time of purchase. The Court held that no further factual development was needed, and the issues of whether Plaintiffs breached the agreements and warranties were fit for judicial review.

Defendants also argued that venue in the Eastern Division of the Southern District of Mississippi was improper because venue was proper in the Southern Division.

According to the Court, in relevant part, 28 U.S.C. § 1391(b)(2) states that a civil action may be brought where "a substantial part of the events or omissions giving rise to the claim occurred." The manufactured home was purchased in the Eastern Division. As the underlying dispute centered on the purchase of this home and the obligations stemming from the agreements made during that purchase, "a substantial part" of the events on which the claims were based must have occurred in the Eastern Division. Therefore, venue was proper in the Eastern Division.

Motion to Dismiss denied.

COMMUNITIES

CASE LAW

Sale of park – Agent's commission

CASE NAME: *Whirlwind Properties, LLC v. John John and Boone Group, Ltd.*
DATE: *10/17/2017*
CITATION: *Missouri Court of Appeals, Western District. --- S.W.3d ----. 2017 WL 4622319*

John was a real estate agent for ReMax. John and Whirlwind entered into a contract that allowed John to show Whirlwind's two mobile home parks with ninety-three occupied mobile homes (the "Property"), for a period of no more than thirty days after the effective date of the agreement, March 3, 2015. The Authorization included a provision that "if [Whirlwind] sells or leases the Property during the Authorization Period or within 180 days after expiration thereof (the "Protection Period") to a prospect introduced to the Property by [John] [...] then Whirlwind will pay John compensation of [4%] to be paid in cash at closing, unless otherwise provided herein."

John introduced Whirlwind to a prospective buyer, Fulton Medical Center, LLC. On March 23, 2015, Whirlwind and Fulton Medical executed a Real Estate Purchase and Sale Contract for four million dollars. The closing was set to occur on January 21, 2016, which was subsequently extended by two additional months to March 21, 2016, outside of the Protection Period.

The Authorization included a liquidated damages clause in the event that the sale of the Property failed to close.

The Sale Contract between Whirlwind and Fulton Medical also contained a liquidated damages clause. Fulton Medical breached the Sale Contract by failing to close by the agreed date, and Fulton Medical released its $100,000 earnest money deposit from escrow to Whirlwind. John filed a lien on the funds and refused to release them, claiming he was entitled to an equal share of the damages. Whirlwind filed suit.

The circuit court held that the Authorization expired without a sale within the Protection Period, which extinguished John's right to compensation. The circuit court also found that the term "net damages" used in the Authorization's Liquidated Damages Clause meant that John was only entitled to an equal share of any damages received by Whirlwind in excess of its actual damages of $469,159.90, finding no positive net damages from which John could recover. John appealed.

The Court concluded that the "sale" contemplated by the Authorization occurred upon the execution of an enforceable sale contract for the Property by a ready, willing, and able buyer introduced to Whirlwind by John, and this occurred within the Authorization Period. There was no indication in the Authorization that the closing on the Property had to be completed by any date certain in order for John to be entitled to compensation.

The Court also found that the circuit court, and Whirlwind on appeal, misconstrued the term "net damages" to mean any damage award received by Whirlwind in excess of its actual damages.

The amount of liquidated damages stipulated in the Sales Contract and forfeited from escrow was ostensibly the parties' most accurate estimate of the actual damages sustained by Whirlwind, and Whirlwind agreed to waive any other claim for damages it may have had. The liquidated damages, for all intents and purposes, were the "net damages received by [Whirlwind] from [Fulton Medical]" resulting from Fulton Medical's failure to close on the transaction between the parties. Accordingly, pursuant to the Authorization, the liquidated damages must be divided equally between Whirlwind and John.

Reversed and remanded.

CASE LAW

Bankruptcy – Vandalism

CASE NAME: *In re Carr*
DATE: *10/17/2017*
CITATION: *United States Bankruptcy Court, W.D. Virginia, Roanoke Division. Slip Copy. 2017 WL 4685034*

Carr filed a Chapter 7, listing Clara J. Pence as an unsecured creditor in the amount of $9,638.40, based on a landlord-tenant dispute in which a judgment was obtained against Carr for unpaid rent and "vanderlism [sic]" of the mobile home interior. Pence filed a complaint objecting to the dischargeability of the debt. Pence testified and provided detailed documentation that she paid $12,982.64 for repairs to the mobile home.

According to the Court, for a debt to be found non-dischargeable under 11 U.S.C. § 523(a)(6), the creditor must establish by a preponderance of the evidence that the debtor's actions in incurring the debt were willful and malicious and that those actions led to injuries to the creditor's person or property.

Pence's exhibits included pictures showing the damages alleged, including: a scorched deck, a broken light fixture, hole-ridden walls and trim, torn screens and blinds, water-damaged ceilings, damaged walls, water-damaged floors, damaged vinyl flooring, damage caused by a leaking air conditioning unit, discolored carpet, a door with a large hole in the center, damaged cabinetry, and a yard with "donuts" caused by a vehicle.

A substantial portion of the damage claimed to be non-dischargeable related to water damage. The Court found

that the evidence did not support the conclusion that the water damage was caused by the Debtor as a result of willful or malicious action. The scorched deck, where a poorly positioned grill burned the wood decking, was the result of bad judgment—dangerously so perhaps—but the Court could not find it to be willful or malicious.

The Court found the majority of the other damages to the mobile home were a consequence of slovenly living habits, negligence, and deplorable housekeeping—the evidence did not rise to the level of non-dischargeable conduct under § 523(a)(6).

However, damages related to the destruction of the bathroom vanity and the living room ceiling fan were held non-dischargeable because the Debtor knew with "objective substantial certainty" his act would injure Pence's property.

The Court found that the debts owed by the Debtor to the Plaintiff were dischargeable in part and non-dischargeable in part. The sum of $1,338.14, including $275.02 for the bathroom cabinet materials, $63.12 for the ceiling fan, and $1,000.00 in labor costs, were declared non-dischargeable pursuant to 11 U.S.C. § 523(a)(6).

CASE LAW

Rents – Receiver

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CASE NAME: *WBCMT 2003-C9 Island Living, LLC v. Swan Creek Limited Partnership*
DATE: *10/23/2017*
CITATION: *United States District Court, E.D. Michigan, Southern Division. Slip Copy. 2017 WL 4778735*

Swan Creek obtained a loan to purchase a mobile home park, executing: a Promissory Note; a Mortgage; and an Assignment of Leases and Rents. Island Living acquired the lender's interests.

Swan Creek defaulted and the Court entered an order granting Island Living's request to appoint a receiver. The order authorized the Receiver to distribute funds in excess of the park's operating expenses to Island Living in order to satisfy all of Swan Creek's financial obligations under the Loan Documents.

Island Living commenced foreclosure proceedings against the park. Island Living was the highest bidder at the sale.

Under Michigan law, the Sheriff's sale was followed by a six-month redemption period during which Swan Creek had the option to redeem the park from Island Living. Swan Creek exercised its right to redeem the park by paying Island Living the redemption amount.

After Swan Creek redeemed the park, the Receiver still held roughly $650,000 in its account. A portion of the Funds represented rents that the Receiver collected from tenants of the park.

Swan Creek filed a motion seeking an order terminating the receivership and requiring the Funds to be distributed to Swan Creek, claiming, among other things, that Island Living improperly drove up the amount of interest accruing under the Loan Documents by unreasonably delaying the foreclosure. Swan Creek also argued that its redemption of the park "terminated" Island Living's right to the Funds.

The Court found that Island Living was not merely biding its time and watching interest accrue between Swan Creek's default and the commencement of foreclosure proceedings. Instead, Island Living was, among other things, conducting environmental assessments of the mobile home park, exploring a sale of the park to a third party, discussing a possible transaction involving Swan Creek, and obtaining an appraisal of the park. Under all of these circumstances, the Court could not conclude that Island Living unreasonably delayed commencing the foreclosure process.

Also, under the express terms of the Mortgage, the Assignment of Rents, and Michigan law, Island Living owned the rents that were paid before the redemption even though these rents were in the possession of the Receiver. Swan Creek did not retroactively divest Island Living of its ownership of the rents when Swan Creek made the redemption payment. Nor did Swan Creek retroactively reinstate its license to collect rents under the Assignment of Rents—which terminated upon its default—by making the redemption payment.

Swan Creek's Motion to Terminate Receivership and Distribute Funds denied.

CASE LAW

Contamination – Liability

CASE NAME: *Cox v. Ametek, Inc.*
DATE: *10/24/2017*
CITATION: *United States District Court, S.D. California. Slip Copy. 2017 WL 4792429*

Plaintiffs - individuals who previously lived or currently live in three mobile home parks owned and/or operated by the third-party defendants (the "TPDs") - filed suit against Senior Operations, LLC, Ametek, Inc. and Thomas Deeney - the third-party plaintiffs (the "TPPs"). Plaintiffs alleged that the TPPs caused and/or failed to mitigate the contamination of groundwater and subsurface soil in and around the mobile home parks by toxic waste originating from an aerospace equipment manufacturing facility owned by Ametek, and later, Senior.

The third-party complaints asserted that the TPDs were at least partially liable for Plaintiffs' damages because the TPDs knowingly withheld information about the contamination from Plaintiffs when executing rental agreements.

As a result of public notices by the State of California and/or the TPDs' due diligence during their acquisition of these properties, the third-party complaints allege, the TPDs were or should have been aware of "the environmental conditions" impacting the three mobile home parks. Information about the contamination would have been found in the records of the San Diego County Department of Health, the San Diego Regional Water Quality Control Board, or the California Department of Toxic Substances Control. The TPPs also alleged that, despite the fact that the TPDs brought suit against the TPPs in 2015 over the contamination of their properties, the TPDs did not disclose this lawsuit to their residents for approximately a year and a half. As a result, the TPDs violated their duties "to deal honestly with Plaintiffs, and those similarly situated, in negotiating lease agreements and disclosing information or concerns which residents of their respective Parks would find material in deciding to live at such Parks."

The TPPs' third-party complaints asserted claims of (1) equitable indemnity, (2) comparative indemnity, and (3) declaratory relief, and sought attorneys' fees. The TPDs moved to dismiss.

The Court first found, in light of the joint-and-several nature of California economic damages, if Plaintiffs succeed, the TPPs will be forced to pay an amount for which the TPDs, not the TPPs, may be legally responsible. That created a substantial risk that harm will occur, which was sufficient to satisfy the constitutional requirement of injury-in-fact.

The Court also found that, while the TPDs may well be victims of the TPPs' conduct, the allegations in the third-party complaints suggested that the TPDs were also tortfeasors to Plaintiffs by failing to disclose the existence of a dangerous condition on their property. The TPPs were not barred from bringing an equitable indemnification action against the TPDs.

Further, assuming that the TPDs breached a duty to warn Plaintiffs about the existence of dangerous contaminants in the soil of mobile home parks, the TPDs and TPPs were joint tortfeasors for purposes of an equitable indemnity claim.

In addition, assuming the facts in the third-party complaint were true, the TPDs were also actively negligent by withholding disclosure of dangerous contamination from their tenants. Such conduct was neither innocent nor passive.

If the TPDs had warned their residents about the contamination, the residents could have protected themselves by either choosing to live elsewhere or taking appropriate precautions to mitigate the harm. Holding the TPDs liable, to a certain extent, would not be unfair under these circumstances and equity permitted the TPPs to seek some indemnification from the TPDs.

However, the Court found that the TPPs had no plausible claim for attorneys' fees. The TPPs were not forced through the tort of the TPDs to defend Plaintiffs' suit. As stated above, the TPP's alleged conduct was significantly more culpable than the TPDs'.

The motions to dismiss were denied in all respects except for the TPPs' claims for attorneys' fees.

LEGISLATION

California

Immigration or citizenship status

2017 CA A 291. Enacted 10/5/2017. Effective 1/1/2018.

This bill amends Cal. Bus. & Prof. Code § 6103.7 to make it a cause for suspension, disbarment, or other discipline for a member of the State Bar to report suspected immigration status or threaten to report suspected immigration status of a witness or party to a civil or administrative action or his or her family member to a federal, state, or local agency because the witness or party exercises or has exercised a right related to the hiring of residential real property.

The bill adds Cal. Civ. Code § 1940.05 to provide that "immigration or citizenship status" includes a perception that the person has a particular immigration status or citizenship status, or that the person is associated with a person who has, or is perceived to have, a particular immigration status or citizenship status.

The bill amends Cal. Civ. Code § 1940.2 to provide that it is unlawful for a landlord, for the purpose of influencing a tenant to vacate a dwelling, to threaten to disclose information regarding or relating to the immigration or citizenship status of a tenant, occupant, or other person known to the landlord to be associated with a tenant or occupant. This paragraph does not require a tenant to be actually or constructively evicted in order to obtain relief.

The bill amends Cal. Civ. Code § 1940.3 to provide that a landlord, or any agent of the landlord, shall not disclose to any person or entity information regarding or relating to the immigration or citizenship status of any tenant, prospective tenant, occupant, or prospective occupant of the rental property for the purpose of, or with the intent of, harassing or intimidating a tenant, prospective tenant, occupant, or prospective occupant, retaliating against a tenant or occupant for the exercise of his or her rights, influencing a tenant or occupant to vacate a dwelling, or recovering possession of the dwelling.

The bill adds Cal. Civ. Code § 1940.35 to provide that it is unlawful for a landlord to disclose to any immigration authority, law enforcement agency, or local, state, or federal agency information regarding or relating to the immigration or citizenship status of any tenant, occupant, or other person known to the landlord to be associated with a tenant or occupant, for the purpose of, or with the intent of, harassing or intimidating a tenant or occupant, retaliating against a tenant or occupant for the exercise of his or her rights, influencing a tenant or occupant to vacate a dwelling, or recovering possession of the dwelling, irrespective of whether the tenant or occupant currently resides in the dwelling.

A landlord is not in violation of this section if he or she is complying with any legal obligation under federal law, or subpoena, warrant, or order issued by a court.

The bill amends Cal. Civ. Code § 1942.5 to provide that to report, or to threaten to report, the lessee or individuals known to the landlord to be associated with the lessee to immigration authorities is a form of prohibited retaliatory conduct.

The bill adds Cal. Civ. Code § 3339.10 to provide that the immigration or citizenship status of any person is irrelevant to any issue of liability or remedy under Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3, Chapter 2 (commencing with Section 789) of Title 2 of Part 2 of Division 2 of this code, or under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the Code of Civil Procedure, or in any civil action involving a tenant's housing rights.

The bill adds Cal. Civ. Proc. Code § 1161.4 to provide that a landlord shall not cause a tenant or occupant to quit involuntarily or bring an action to recover possession because of the immigration or citizenship status of a tenant, occupant, or other person known to the landlord to be associated with a tenant or occupant, unless the landlord is complying with any legal obligation under any federal government program that provides for rent limitations or rental assistance to a qualified tenant.

No affirmative defense is established if a landlord files an unlawful detainer action for the purpose of complying with any legal obligation under any federal government program that provides for rent limitations or rental assistance to a qualified tenant.

For purposes of this section, "immigration or citizenship status" includes a perception that the person has a particular immigration status or citizenship status, or that the person is associated with a person who has, or is perceived to have, a particular immigration status or citizenship status.

LEGISLATION

California

Immigration or citizenship status

2017 CA A 299. Enacted 10/5/2017. Effective 1/1/2018.

This bill amends Cal. Civ. Code § 1940.3 to provide that a landlord, or any agent of the landlord, shall not disclose to any person or entity information regarding or relating to the immigration or citizenship status of any tenant, prospective tenant, occupant, or prospective occupant of the rental property for the purpose of, or with the intent of, harassing or intimidating a tenant, prospective tenant, occupant, or prospective occupant, retaliating against a tenant or occupant for the exercise of his or her rights, influencing a tenant or occupant to vacate a dwelling, or recovering possession of the dwelling.

Existing law prohibits any city, county, or city and county from compelling a landlord or any agent of the landlord to take any action, as specified, based on the immigration or citizenship status of a tenant, prospective tenant, occupant, or prospective occupant of residential rental property. Existing law provides that these prohibitions do not prohibit a landlord from complying with any legal obligation under federal law.

This bill revises this prohibition to include a "public entity," which the bill would define to include the state, as defined, a city, county, city and county, district, public authority, public agency, and any other political subdivision or public corporation in the state. The bill clarifies that the term "federal law" in the provision described above includes any legal obligation of a landlord under a federal government program that provides for rent limitations or rental assistance to a qualified tenant, and broadens that provision to include any legal obligation of a landlord under a subpoena, warrant, or other order issued by a court.

LEGISLATION
California
Disclosure – Flood hazard area

2017 CA A 646. Enacted 10/5/2017. Effective 1/1/2018.

This bill adds Cal. Gov't. Code § 8589.45 to provide that, in every lease or rental agreement for residential property entered into on or after July 1, 2018, the owner or person offering the property for rent shall disclose to a tenant, in no smaller than eight-point type, the following:

(1) That the property is located in a special flood hazard area or an area of potential flooding, if the owner has actual knowledge of that fact. For purposes of this section, "actual knowledge" includes the following:

(A) The owner has received written notice from any public agency stating that the property is located in a special flood hazard area or an area of potential flooding.

(B) The property is located in an area in which the owner's mortgage holder requires the owner to carry flood insurance.

(C) The owner currently carries flood insurance.

(2) That the tenant may obtain information about hazards, including flood hazards, that may affect the property from the Internet Web site of the Office of Emergency Services. The disclosure shall include the Internet Web site address for the MyHazards tool maintained by the office.

(3) That the owner's insurance does not cover the loss of the tenant's personal possessions and it is recommended that the tenant consider purchasing renter's insurance and flood insurance to insure his or her possessions from loss due to fire, flood, or other risk of loss.

(4) That the owner is not required to provide additional information concerning the flood hazards to the property and that the information provided pursuant to this section is deemed adequate to inform the tenant.

The disclosures required by this section are subject to the requirements of Section 1632 of the Civil Code.

LEGISLATION
California
Accessory dwelling units

2017 CA A 494. Enacted 10/8/2017. Effective 1/1/2018.

This bill amends Cal. Gov't. Code § 65852.2 to provide that an accessory dwelling unit may be rented separately from the primary residence.

The bill requires that parking requirements for accessory dwelling units not exceed one parking space per unit or per bedroom, whichever is less. The bill defines tandem parking for these purposes and also allows replacement parking spaces to be located in any configuration if a local agency requires replacement of off-street parking spaces when a garage, carport, or covered parking structure is converted to an accessory dwelling unit. The bill removes the prohibition on specified off-street parking where that parking is not allowed anywhere else in the jurisdiction.

The bill provides that an accessory dwelling unit includes a manufactured home, as defined in Section 18007 of the Health and Safety Code.

LEGISLATION
California
Accessory dwelling units

2017 CA S 229. Enacted 10/8/2017. Effective 1/1/2018.

This bill amends Cal. Gov't. Code § 65852.2 to authorize a local agency to provide by ordinance for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily use. The bill authorizes the ordinance to prohibit the sale or other conveyance of the unit separate from the primary residence. The bill

extends the use of the maximum standards to a proposed accessory dwelling unit on a lot zoned for residential use that includes a proposed single-family dwelling.

Existing law prohibits an accessory dwelling unit from being considered a new residential use for the purposes of calculating local agency connection fees or capacity charges for utilities, including water and sewer service. Existing law prohibits, for an accessory dwelling unit constructed in an existing space, a local agency from requiring the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility and from imposing a related connection fee or capacity charge.

This bill would extend the applicability of both of the above prohibitions to special districts and water corporations.

The bill provides that an accessory dwelling unit includes a manufactured home, as defined in Section 18007 of the Health and Safety Code.

LEGISLATION
California
Solar energy systems

2017 CA A 634. Enacted 10/15/2017. Effective 1/1/2018.

This bill amends Cal. Civ. Code §§ 714.1 and 4600 and adds Cal. Civ. Code § 4746 to prohibit an association from establishing a general policy prohibiting the installation or use of a rooftop solar energy system for household purposes on the roof of the building in which the owner resides, or a garage or carport adjacent to the building that has been assigned to the owner for exclusive use. The bill also prohibits an association from requiring approval by a vote of members owning separate interests in the common interest development in those circumstances. Any action by an association that contravenes these provisions would be void and unenforceable.

The bill also exempts from the vote requirement in the Davis-Stirling Common Interest Development Act an action to install and use a solar energy system on the common roof of a residence that meets specified requirements.

LEGISLATION
California
Mobilehome Park Rehabilitation and Purchase Fund

2017 CA S 136. Enacted 10/13/2017. Effective immediately.

This bill amends Cal. Health & Safety Code § 50784.7 and adds Cal. Health & Safety Code § 50787.

Existing law authorizes the Department of Housing and Community Development to make loans from the Mobilehome Park Rehabilitation and Purchase Fund, a continuously appropriated fund, to qualified mobilehome park residents, resident organizations, and nonprofit housing sponsors, and also authorizes the use of fund moneys for related administrative costs of the department. Existing law requires the Department to adopt regulations for the administration and implementation of these provisions.

The bill authorizes the Department to contract directly with nonprofit corporations that have significant experience working with mobilehome park residents, or acquiring, rehabilitating, and preserving affordable housing, and have statewide or regional capacity to deliver technical assistance to mobilehome park residents or community-based nonprofit corporations in order to assist them in acquiring, financing, operating, and improving mobilehome parks occupied by low- and moderate-income households. The bill authorizes moneys in the fund to be used for grants to provide these services.

The bill prohibits the use of funds for the purpose of taking a mobilehome park by the state, county, or city by eminent domain.

The bill deems contracts entered into pursuant to these provisions to be for local assistance.

LEGISLATION

California

Home sharing

2017 CA S 147. Enacted 10/13/2017. Effective 1/1/2018.

This bill amends Cal. Civ. Code §§ 798.34 and 799.9 to authorize any homeowner who lives alone to designate one other person per calendar year to share his or her mobilehome on an ongoing basis, except as specified, and would prohibit the imposition of a fee by management for that person.

Existing law authorizes a homeowner to share the mobilehome with a person over 18 years of age if that person provides live-in health care or live-in supportive care to the homeowner pursuant to a written treatment plan prepared by the homeowner's physician. Existing law also authorizes a senior homeowner in an age-limited mobilehome park to share the mobilehome with specified persons if the senior homeowner requires live-in health care, live-in supportive care, or supervision pursuant to a written treatment plan prepared by a physician and surgeon. A person staying in the mobilehome of a homeowner under these provisions has no rights of tenancy in the mobilehome park and is required to comply with the rules and regulations of the park.

This bill permits park management to require written confirmation from a licensed health care professional of the homeowner's need for the care or supervision, if the need is not readily apparent or already known to management.

The bill provides that these provisions do not grant any guest, companion, live-in caregiver, or family member under the care of a senior homeowner, rights of tenancy in the park and makes any violation of the rules and regulations of the park by any of these persons subject to enforcement by park management. The bill also provides that these provisions do not create a duty on the part of park management to manage, supervise, or provide care for a homeowner's guest, companion, live-in caregiver, or family member under the care of a senior homeowner, during that person's stay in the mobilehome park.

EXECUTIVE ORDER

California

State of emergency - Wildfires

EXECUTIVE ORDER B-43-17. Issued 10/18/2017. Effective immediately.

WHEREAS on October 9, 2017, I proclaimed a state of emergency to exist in Butte, Lake, Napa, Orange, Mendocino, Nevada, Sonoma, and Yuba Counties as a result of the numerous wildfires burning in those counties; and

WHEREAS on October 10, 2017, I proclaimed a state of emergency to exist in Solano County as a result of the wildfires burning in that county; and

WHEREAS these wildfires are far from contained and are already some of the most destructive and devastating wildfires in California's history; and

WHEREAS California will require immediate additional resources to assist in responding to, recovering from, and mitigating the effects of these wildfires; and

WHEREAS under the provisions of section 8571 of the Government Code, I find that strict compliance with the various statutes and regulations specified in this order would prevent, hinder, or delay the mitigation of the effects of the wildfires; and

NOW, THEREFORE, I, EDMUND G. BROWN JR., Governor of the State of California, in accordance with the authority vested in me by the Constitution and statutes of the State of California, and in particular, sections 8567 and 8571 of the Government Code, do hereby issue the following orders to become effective immediately:

IT IS HEREBY ORDERED THAT:

12. The Department of Housing and Community Development and local enforcement agencies with delegated disaster authority will jointly develop permitting, operating, and construction standards to maintain reasonable health and safety standards for the disaster survivors, the residents and the surrounding communities in the impacted areas. Such standards shall provide reasonable consistency with appropriate fire, health, flood, and other factors normally considered in the mobilehome park approval process for the construction of a new mobilehome park or manufactured home installation standards during the three-year suspension authorized by this Executive Order.

13. All fees retained by the state that are imposed by the Mobilehome Parks Act, as required by Health and Safety Code, section 18500 et seq., and the Special Occupancy Parks Act, section 18870 et seq., are suspended and shall be waived by the Department of Housing and Community Development for three years after the date of this Executive Order with regard to manufactured home installation and recreational vehicle use for disaster survivors who are registered owners of a manufactured home or mobilehome, or recreational vehicle, whose home was damaged or destroyed as a result of the fires located in the impacted counties.

14. All fees retained by the state that are imposed by the Mobilehome Parks Act as required by Health and Safety Code section 18503 and California Code of Regulations, title 25, section 1020.1, are suspended and shall be waived by the Department of Housing and Community Development, including fees for any required inspections or plan checking, for any disaster survivors who are a registered owner of a manufactured home or mobilehome whose home was damaged or destroyed as a result of the wildfires located in the impacted counties.

15. All fees retained by the state that are imposed by the Manufactured Housing Act, as required by Health and Safety Code section 18031 and California Code of Regulations, title 25, section 4044, are suspended and shall be waived by the Department of Housing and Community Development, including fees for any required inspections or plan checking, for any registered owner of a manufactured home or mobilehome whose home was damaged or destroyed as a result of the wildfires located in the impacted counties.

16. All fees retained by the state that are imposed by the Manufactured Housing Act, as set forth at Health and Safety Code sections 18114 and 18116, are suspended and fees shall be waived by the Department of Housing and Community Development, including any fees for the late renewal of registration certificate or certificate of title for a manufactured home or mobilehome, by any registered owner that is a disaster survivor and whose home was damaged or destroyed as a result of the wildfires located in the impacted counties.

17. All fees retained by the state that are imposed by the Manufactured Housing Act, as set forth at Health and Safety Code section 18075 and chapter 5 (commencing with Section 5510) of the California Code of Regulations, title 25, related to establishing proof of ownership are suspended and shall be waived for any mobilehome or manufactured home resident whose home was damaged or destroyed by the identified wildfires for three years of the date of this Executive Order. This waiver shall include, but not be limited to, processing fees for duplicate certificates of title or registrations, salvage applications and salvage certificates, the processing fees and costs for establishing registered ownership pursuant to article 3.5 (commencing with section 5535) of the California Code of Regulations, title 25, and other related fees.

18. The planning and zoning requirements for manufactured homes and mobilehome parks, in

Government Code sections 65852.3 through 65863.13, are suspended for three years after the date of this Executive Order, with regard to housing project(s) in the impacted counties.

19. Any local government ordinances in the impacted counties which would preclude the placement and use of a manufactured home or recreational vehicle on a private lot for use during the reconstruction of a home, are suspended for three years after the date of this Executive Order for individuals impacted by the fires. Property owners placing manufactured homes or recreational vehicles on lots shall obtain permits as described in paragraph 12 to ensure health and safety standards are met that are consistent with the standards set forth herein.

PRESS RELEASE
Illinois
Water contamination

Issued 9/8/2017.

Attorney General Lisa Madigan filed a lawsuit against Country Lane Mobile Home Park LLC, in Heyworth, IL, over bacterial contamination in the park's public water supply. The court also entered an agreed preliminary injunction order requiring the park owner to provide residents with safe drinking water.

Under the agreed order, the mobile home park's owner must maintain the boil order as required by law and provide replacement drinking water while the owner investigates the source of the contamination. The company is also required to continue operating newly installed continuous chlorination equipment and provide regular status updates to the Madigan's office and the EPA. Madigan's lawsuit asked for civil penalties.

ADOPTED RULE
Kentucky
Sub-metering

Effective 9/8/2017, this rule amends 401 Ky. Admin. Regs. 8:010 to provide that "Sub-meter" means the use by a property owner or operator of meters that measure water used by tenants for the purpose of passing costs charged by a public water system from the property owner or operator to tenants based on tenants' actual water usage.

ADOPTED RULE
Kentucky
Sub-metering

Effective 9/8/2017, this rule amends 401 Ky. Admin. Regs. 8:020 to provide that a property using sub-meters shall not be considered a public water system as defined by 40 C.F.R. 141.2 and, except for this administrative regulation, shall be exempt from the requirements of 401 Ky. Admin. Regs. Chapter 8.

A property using sub-meters and exempt from the requirements of 401 Ky. Admin. Regs. Chapter 8 shall:

1. Receive all of its water from a public water system and shall not change the quality of water provided to customers;

2. Be located on property owned by a single person, entity, individual, or a co-op or condominium association of property owners;

3. Not be regulated as a water utility by the Kentucky Public Service Commission; and

4. Not charge tenants an amount that exceeds tenants' share of the actual amount charged by the public water system to the owner or operator of a property using a sub-metered system, based on the tenants' actual water

usage in proportion to the total amount of water used for the entire sub-metered property.

The owner or operator of a property using a sub-metered system shall designate a person or organization as the owner or operator of the sub-metered system and shall provide the name, address, and phone number of the designated owner or operator upon request by the cabinet.

The owner or operator of a property using a sub-metered system shall certify to the cabinet in writing that the:

1. Sub-metered system does not have any cross connections; and

2. Applicable provisions of 815 Ky. Admin. Regs. 20:120 have been met.

An advisory received by the owner or operator pursuant to Section 3(9) of this administrative regulation shall be disseminated to property tenants in the manner established in Section 3(10) of this administrative regulation.

Public notices and consumer confidence reports received by the owner or operator pursuant to 401 Ky. Admin. Regs. 8:075 shall be disseminated to property tenants in the next billing period.

The rule provides that the monthly operating report of the supplier of water must include, among other things, the average number of hours per day water is being treated.

The rule adds that the public water system shall submit to the cabinet a completed Annual Water System Data form, DOW0801, (April 2017) not later than January 10 of each year.

The rule provides that the operation and maintenance manual kept by each public water system must include, among other things, procedures for issuing a boil water advisory and consumer advisory as established in this administrative regulation, including notification to the public and local health department and consumers.

The rule also provides that each community water system shall establish and maintain a flushing program that ensures:

(a) Dead end and low usage mains are flushed periodically;

(b) Drinking water standards are met; and

(c) Sediment and air removal and disinfectant residuals established in 401 Ky. Admin. Regs. 8:150, Section 1 are maintained.

The rule deletes the requirement that a distribution system may be thoroughly flushed at least twice a year, usually in the spring and fall.

PROPOSED RULE

Ohio

Residential Code - Exceptions

This rule amends Ohio Admin. Code 4101:8-1-01 to provide that the exception for manufactured housing from the provisions of the Residential Code of Ohio does not apply to the utility connections from the utility service point to the manufactured homes, except that a manufactured home located within a manufactured home park and used by the park operator to promote the sale/rental of manufactured homes in that park remains exempt. This exemption for homes within a park, used by the park operator to promote the sale/rental of manufactured homes in that park, also applies to the existing exception for alterations of, additions to, or changes of occupancy of manufactured homes.

DEFAULT SERVICING

CASE LAW

Foreclosure – Affixation

CASE NAME: *Bank of America, N.A. v. Bethea*
DATE: *06/28/2017*
CITATION: *Court of Appeals of South Carolina. Not Reported in S.E.2d. 2017 WL 4676635*

Shawn L. Bethea appealed the special referee's order granting summary judgment in favor of Bank of America in the Bank's foreclosure action against Bethea's property on which a mobile home was located. Bethea argued the special referee erred by (1) finding judicial estoppel barred him from asserting the mobile home was not affixed to the Land; and (2) granting the Bank's motion for summary judgment despite a magistrate's court order granting him title to the mobile home in a storageman's lien action.

Bethea asserted in bankruptcy court in 2004 that the mobile home was real property. When Bethea discovered in 2010 that the certificate of title to the mobile home was never transferred into his name, he attempted to change the certificate of title. When he was unsuccessful, he filed the action in magistrate's court alleging rents due pursuant to a storageman's lien. The foregoing actions indicated a continued belief by Bethea that he owned the mobile home throughout this time and the magistrate's action was an attempt to effectuate the true state of the title of the mobile home.

The Court found Bethea's allegation in the foreclosure action that the mobile home was not affixed to the Land was inconsistent with his allegations in the bankruptcy action and was an intentional effort to mislead the court in the foreclosure action.

The Court also found no error by the special referee in finding the mobile home was a permanent fixture to the Land and, therefore, granting the Bank's motion for summary judgment.

Bethea's predecessor in interest purchased the mobile home and the real estate, intending to have the mobile home become a fixture, and she indicated her intent by signing the affidavit with the county. In addition, a September 5, 2000 plat depicted an "existing mobile home" as part of the Land. In June 2001, the prior owner executed a deed in lieu of foreclosure. The warranty deed provided a legal description of the real estate and stated "[t]his includes any manufactured home owned by the defendant(s) located on this property."

The deed included a legal description of the Land and stated the conveyance "includes a 2001 Pioneer Mobile Home." In November 2002, Bethea refinanced the mobile home and obtained an appraisal of the Land for financing. Although the mobile home was not referenced in the mortgage, the description in the appraisal included a manufactured home on a "brick foundation." Additionally, all of the supporting documentation for the refinance indicated the mobile home was connected to the real estate, including the listing of manufactured house as the type of property on the schedule of real estate owned. Also, in his 2004 bankruptcy action, Bethea listed the real estate and the mobile home together as real property, attaching the 2002 appraisals to establish a value of the property.

Affirmed.

PROPOSED RULE

CFPB

Reg. Z

Proposed rule with request for public comment.

82 Fed. Reg. 48463 (10/18/2017).

The Bureau of Consumer Financial Protection (Bureau) is proposing amendments to certain Regulation Z mortgage

servicing rules issued in 2016 relating to the timing for servicers to transition to providing modified or unmodified periodic statements and coupon books in connection with a consumer's bankruptcy case. The Bureau requests public comment on these proposed changes.

Comments must be received on or before November 17, 2017.

INSTALLATION

PROPOSED RULE
Maine
Installation standards

This rule amends the regulations of the Manufactured Housing Board, 02-385, Ch. 890, Manufactured Home Installation Standards.

The rule amends Temporary Storage to replace "retailer" with "dealer."

The rule amends Alterations during Initial Installation, to provide that additions, modifications, replacement or removal of any equipment that affects the installation of the home made by the manufacturer, dealer (formerly, retailer) or mechanic (formerly installer) prior to completion of the installation must equal or exceed the protections and requirements of these Installation Standards, the MHCSS (24 CFR part 3280) and the Manufactured Home Procedural and Enforcement Regulations, the MHPER (24 CFR part 3282).

The rule amends Definitions to add that "Alteration" means the replacement, addition, and modification, or removal of any equipment or installation after sale by a manufacturer to a dealer but prior to sale by a dealer to a purchaser which may affect the construction, fire safety, occupancy, plumbing, heat-producing or electrical system. It includes any modification made in the manufactured home which may affect the compliance of the home with the standards, but it does not include the repair or replacement of a component or appliance requiring plugin to an electrical receptacle where the replaced item is of the same configuration and rating as the one being replaced. It also does not include the addition of an appliance requiring plug-in to an electrical receptacle, which appliance was not provided with the manufactured home by the manufacturer, if the rating of the appliance does not exceed the rating of the receptacle to which it is connected.

The rule amends the definition of "Installation" to provide that it means the placing of manufactured housing on a foundation or supports at a building site and the assembly and fastening of structural components of manufactured housing, including the completed roof system, as specified by the manufacturer's installation instructions and in accordance with the rules of the Board. Installation also includes the connection to existing services, including but not limited to electrical, oil, water, sewage and similar systems that are necessary for the use of the manufactured housing for dwelling purposes.

Formerly, "Installation" meant the process of affixing, assembling, or setting up manufactured housing on foundation or supports at the building site.

"Installer" means any licensed manufacturer or dealer or an employee of a licensed manufacturer or dealer, or a person licensed as a mechanic, who engages in the process of affixing, assembling or setting up of manufactured housing on foundations or supports at a building site (adding, manufacturer).

The rule amends Pre-occupancy Inspections to provide that Board staff will conduct pre-occupancy inspections of 30% (formerly, 20%) of all new manufactured homes installed in Maine.

For homes that pass inspection, a seal (formerly, label) will be affixed in (formerly, under) the kitchen sink cabinet certifying compliance with these manufactured

home installation standards. For homes that do not pass inspection, a notice of violation and order of correction will be issued to the manufacturer, dealer or mechanic (adding, manufacturer) who performed the installation in the manner described in Chapter 370, Section 5(A) of the Board's rules.

The rule amends Pier Configuration, Caps, to provide that caps must be solid concrete or masonry (adding, concrete) of at least 4 inches nominal in thickness, or hardboard lumber at least 2 inches nominal in thickness, or be of corrosion-protected minimum one-half inch thick steel, or be of other listed materials.

The rule amends Design Procedures for Concrete Block Piers, to refer to Frame Piers 36 inches to 67 (formerly, 48) inches high and Corner Piers and All Piers over 67 (formerly, 48) inches High.

The rule makes changes to Table 3 to Subchapter E, Section II – Ground Anchor Installation Maximum Diagonal Tie-down Strap Spacing Wind Zone III.

The rule amends Additional Requirements to provide that the home must be installed and leveled by a licensed mechanic (formerly, installer).

The rule amends Appendix A re: Roof Load Zones to add Knox to the list of counties deemed to be within the 40 psf roof load zone and delete Franklin and Oxford.

Franklin and Oxford are added to the list of counties deemed to be within the 30 psf roof load zone, and Knox is deleted.

The rule also deletes Installation Zones.

PROPOSED RULE

Maine

Installation standards

This rule amends the regulations of the Manufactured Housing Board, 02-385, Ch. 900, Used Manufactured Home Installation Standard.

The rule amends Definitions to provide that "Ground anchor" means a specific anchoring assembly device to transfer manufactured home anchoring loads to the ground (formerly, it was a device at the manufactured home pad designed to transfer manufactured home anchoring loads to the ground).

The rule deletes the definition of Hurricane-Resistive Manufactured Home.

The rule amends the definition of "Installation" to provide that it means the placing of manufactured housing on a foundation or supports at a building site and the assembly and fastening of structural components of manufactured housing, including the completed roof system, as specified in the manufacturer's installation instructions. Installation also includes the connection to existing services, including but not limited to electrical, oil, water, sewage and similar systems that are necessary for the use of the manufactured housing for dwelling purposes.

Formerly, "Installation" meant the process of affixing or assembling or setting up of manufactured housing on a foundation or supports at the building site.

The rule adds that "Installation instructions" means DAPIA-approved instructions provided by the home manufacturer and detail the home manufacturer requirements for support and anchoring systems, and other work completed at the installation site.

"Installer" means any licensed manufacturer or dealer or an employee of a licensed manufacturer or dealer, or a

person licensed as a mechanic who engages in the process of affixing, assembling or setting up of manufactured housing on foundations or supports at a building site (adding, manufacturer).

The rule adds the definition of "Manufactured Home," including HUD-code and pre-HUD–code homes.

The rule provides that "Mechanic" means an individual engaged in the installation or servicing of HUD-code or pre-HUD-code homes.

Formerly, "Mechanic" meant, for the purposes of these rules, any licensed individual who engages in the process of installing manufactured housing. Meaning the process of affixing or assembling or setting up a home on foundations or supports at the building site installation or servicing of HUD-code or pre-HUD-code homes.

The rule adds that "Perimeter blocking" means regular spaced piers supporting the sidewalls and marriage wall of the home. Some homes require perimeter blocking in addition to supports under the home's frame.

The rule provides that "Set-up" includes the connection of existing electrical, oil, gas, water, sewage, and similar systems.

The rule adds that "Tie" means straps, cable, or securing devices used to connect the manufactured home to anchoring assemblies.

The rule also adds that "Wind zone" means the areas designated on the Basic Wind Zone Map, set forth in the Manufactured Home Construction and Safety Standards, part 3280, as further defined in Appendix A to the Chapter.

The rule provides that Subchapter B - Foundation Systems and Site Preparations prescribes standards for the installation of manufactured home foundation systems, site preparation, and design. This subchapter is applicable to used (formerly, relocated) manufactured homes, when and wherever newly installed at a home site. Prior to the installation of a used manufactured home the installer is to verify that the design and construction of the manufactured home is suitable for the site location where the home is to be installed.

Used manufactured homes must not be installed in a wind zone that exceeds the design wind loads for which the home has been designed, as evidenced by the wind zone indicated on the home's data plate. Maine wind zones are described in Appendix A to the Chapter.

Used manufactured homes must not be located in a roof load zone that exceeds the design roof load for which the home has been designed as evidenced by the roof load zone indicated on the home's data plate. Maine roof load zones are described in Appendix A to the Chapter.

The rule provides that all drainage must be diverted away from the home and must slope a minimum of one-half inch per foot away from the foundation for the first ten feet. Where property lines, walls, slopes, or other physical conditions prohibit this slope, the site must be provided with drains or swales or otherwise graded to drain water away from the structure.

The rule amends the requirements for Crawlspace Ventilation and for Skirting.

The rule adds Appendix A to provide for Roof Load Zones, Wind Zones and Installation Zones, and amends Appendices B – E.

ADOPTED RULE

New Mexico

Inspection fees

Effective 11/15/2017, this rule amends N.M. Code R. § 14.12.10.8, subsections D and E - Manufactured Housing Fee, to provide:

D. Re-inspection fee (formerly, Inspection or Re-inspection fees): sixty-five dollars ($65.00).

E. Inspection Permits (adding, Inspection): sixty-five dollars ($65.00). The permit will be for the installation, permanent foundation and utility connections.

This change acknowledges that charging an inspection fee and a permit fee for the initial inspection is a double charge for a single inspection action.

PROPOSED RULE
Texas
Manufactured Housing Program

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (the "Department") proposes to amend 10 Texas Administrative Code, Chapter 80, §§ 80.2, 80.3, 80.32, 80.33, 80.36, 80.38, 80.40, 80.41, 80.73, 80.80, 80.90 and 80.91 relating to the regulation of the manufactured housing program. The rules are revised to comply with House Bill 2019 (85th Legislature, 2017 regular session) that amends the Manufactured Housing Standards Act and for clarification purposes.

Section 80.2(2): Clarification of the definition of business days.

Section 80.3(c): The term of lease-purchase is removed and the name of the Statement of Ownership and Location is changed to the Statement of Ownership.

Section 80.3(g): The reference to the home previously being designated for business use is removed and the name of the Statement of Ownership and Location is changed to the Statement of Ownership.

Section 80.3(h)(3): The name of the Statement of Ownership and Location is changed to the Statement of Ownership.

Section 80.3(k)(1) and (2): The name of the Statement of Ownership and Location is changed to the Statement of Ownership.

Section 80.32(b), (c), (h) and (u): Removes the reference to lease-purchase.

Section 80.32(d) and (g): The name of the Statement of Ownership and Location is changed to the Statement of Ownership.

Section 80.32(p): The name of the Texas Manufactured Homeowners' Recovery Trust Fund changed to the Texas Manufactured Homeowner Consumer Claims Program (Claims Program).

Section 80.33(g): Additional responsibilities are added for contracting installers subcontracting the installation and included the requirement for provisional installers to submit a copy of the Notice of Installation to the Department's Field Office within three days of installation.

Section 80.33(h): The name of the Statement of Ownership and Location is changed to the Statement of Ownership.

Section 80.36(a): The name of the Statement of Ownership and Location is changed to the Statement of Ownership.

Section 80.38(b): Removes the requirement that the Governor of Texas must declare existence of an emergency, which allows the consumer the right to waive their three day right of rescission in case of an emergency, rather than only after a governor declared natural disaster.

Section 80.40(a): Makes a correction in the last sentence by deleting the word "of."

Section 80.41(c)(4) - (8): Includes additional requirements for the licensing education course for related persons added to licenses.

Section 80.41(d)(1): Removes all the Continuing Education specific hour requirements.

Section 80.41(d)(2): Adds requirement that all related persons added to a license must complete the eight hours of continuing education every two years.

Section 80.41(e)(4)(A): Removes language requiring fingerprints to be obtained prior to applying for a license.

Section 80.41(f)(1)(C): The name of the Trust Fund changed to the Manufactured Homeowner Consumer Claims Program.

Section 80.73(i): The new subsection allows a purchaser of a manufactured home for business use to file a complaint against the retailer if the home is not habitable, if they disclosed to the retailer in writing at the time of purchase the intent for a person to be present for regularly scheduled work of not less than eight hours.

The title of Subchapter F is changed from Manufactured Homeowners' Recovery Trust Fund to Manufactured Homeowner Consumer Claims Program.

The title of Section 80.80 is changed from Administration of Claims under the Manufactured Homeowners' Recovery Trust Fund to Manufactured Homeowner Consumer Claims Program.

Section 80.80(a), (b) and (f): Revises the name from Manufactured Homeowners' Recovery Trust Fund or the Fund to either Manufactured Homeowner Consumer Claims Program or the Claims Program.

The title of Subchapter G is changed from Statements of Ownership and Location to Statements of Ownership.

The title of Section 80.90 is changed from Issuance of Statements of Ownership and Location to Issuance of Statements of Ownership.

Section 80.90(a) - (c): Changes the application name from Application for Statement of Ownership and Location to Application for Statement of Ownership.

Section 80.90(d): Removes the requirement for certified copies of supporting documentation to accept just copies and updates the name of Statement of Ownership and Location by removing "and Location."

Section 80.90(e): Updates the name of Statement of Ownership and Location by removing "and Location" and includes the term Certificates of Attachment as automatically converting to the new document of title, the Statement of Ownership.

Section 80.90(f) - (i): Updates the name of the Statement of Ownership and the application by removing "and location."

Section 80.90(j): Adds new subsection stating the executive director may require an affidavit of fact requesting additional documentation to accompany a statement of ownership application.

Section 80.91(a): Changes SOL to Statement of Ownership.

BULLETIN
Texas
Statement of Ownership

Texas Department of Housing and Community Affairs, Manufactured Housing Division Bulletin. Issued 10/19/2017.

To comply with the statutory changes in HB 2019 (85th Legislature, 2017 regular session) effective 9/1/2017, the Application for Statement of Ownership has been revised and is now effective.

A fillable form is located on the Department's Website at http://www.tdhca.state.tx.us/mh/ownership-location.htm.

LENDING

BULLETIN

FHFA

Preferred language question

On October 20, 2017, the Federal Housing Finance Agency (FHFA) announced its decision to add a preferred language question to the redesigned Uniform Residential Loan Application (URLA). FHFA is making the text of the preferred language question available to the public. The Enterprises will publish the redesigned URLA that includes the preferred language question by the end of 2017.

PREFERRED LANGUAGE QUESTION TEXT:

Language Preference – Your loan transaction is likely to be conducted in English. This question requests information to see if communications are available to assist you in your preferred language. Please be aware that communications may NOT be available in your preferred language.

Optional: Mark the language you would prefer, if available:

( ) English ( ) Chinese ( ) Korean ( ) Spanish ( ) Tagalog ( ) Vietnamese ( ) Other: ------

( ) I do not wish to respond.

Your answer will NOT negatively affect your mortgage application. Your answer does not mean the Lender or Other Loan Participants agree to communicate or provide documents in your preferred language. However, it may let them assist you or direct you to persons who can assist you.

Language assistance and resources may be available through housing counseling agencies approved by the U.S. Department of Housing and Urban Development. To find a housing counseling agency, contact one of the following federal government agencies:

• U.S. Department of Housing and Urban Development (HUD) at (800) 569-4287 or www.hud.gov/counseling.• Consumer Financial Protection Bureau (CFPB) at (855) 411-2372 or www.consumerfinance.gov/find-ahousing-counselor.

LICENSING

TEMPORARY RULE

Oregon

Servicers

Effective: 10/20/2017 through 04/17/2018.

These rules amend Or. Admin. R. 441-850-0005 and adopt Or. Admin. R. 441-890-0005, 441-890-0010, 441-890-0015, 441-890-0020, 441-890-0025, 441-890-0030, 441-890-0035, 441-890-0040, 441-890-0045, 441-890-0050.

The Mortgage Loan Servicer Practices Act (the Act), which was signed into law on August 2, 2017, requires that mortgage servicers obtain a license from the Department of Consumer and Business Services (DCBS) by January 1, 2018. The Act also directs the Director of DCBS (Director) to promulgate regulations establishing the requirements for obtaining a license.

These temporary rules set application requirements for obtaining a license, requirements for corporate surety bonds and irrevocable letters of credit, and application and renewal fees. The rules also clarify which entities are exempt from licensing.

MANUFACTURING

DIRECT FINAL RULE
EPA
Formaldehyde

Direct final rule. 82 Fed. Reg. 49287 (10/25/2017).

40 CFR Part 770. Voluntary Consensus Standards Update; Formaldehyde Emission Standards for Composite Wood Products.

EPA is taking direct final action on a revision to the formaldehyde standards for composite wood products final rule, published in the Federal Register on December 12, 2016. The revision will update multiple voluntary consensus standards that have been updated, superseded, or withdrawn since publication of the notices of proposed rulemaking on June 10, 2013 and will amend an existing regulatory provision regarding the correlation of quality control test methods.

This final rule is effective on December 11, 2017 without further notice, unless EPA receives relevant adverse comment by November 9, 2017. If EPA receives adverse comment, the Agency will publish a timely withdrawal in the Federal Register informing the public that the rule will not take effect.

Potentially affected entities may include:

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

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

EPA is updating the references for multiple voluntary consensus standards that were incorporated by reference in the December 12, 2016 formaldehyde emission standards for composite wood products final rule because they have been updated, superseded, and/or withdrawn by their respective organization. Table 1 in this Unit outlines only the voluntary consensus standards being addressed in this rulemaking and their respective updated versions. All other standards in the formaldehyde emission standards for composite wood products final rule will continue to be incorporated by reference as they appear in that final rule, and any future versions would be considered in a later rulemaking.

Additionally, EPA is updating the existing reference in the regulatory text from International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC) 17020: 1998(E)—Conformity assessment—Requirements for the operation of various types of bodies performing inspection (i.e., ISO/IEC 17020: 1998) to the 2012 version of this standard that was previously incorporated by reference (i.e., ISO/IEC 17020:2012(E)). ISO/IEC 17020:2012(E) was approved for incorporation by reference, but not all of the existing references were updated to reflect the new version.

EPA is also revising § 770.20(d)(2)(i) to state that the Agency will allow the correlation of the tests conducted through the quality control methods listed in § 770.20(b) to either ASTM E1333-14 or, upon a showing of equivalence, ASTM D6007-14 test chamber tests. The California Air Resources Board (CARB) under its Air Toxic Control Measure has approved the use of ASTM D6007-14 test chambers that have previously shown equivalence under § 770.20(d) to an ASTM E1333-14 test chamber to be correlated to other mill quality control method tests listed in § 770.20(b). According to CARB staff, this is the commonly used method for conducting correlation between test methods based on the greater availability of ASTM D6007-14 test chambers. Several third-party certifiers, regulated entities and their associations expressed the importance of allowing mill quality control tests to be correlated to ASTM D6007 test chambers. EPA agrees that significant disruptions would occur, including testing and TSCA Title VI product certification capacity shortfalls, if the correlation of mill quality control tests were allowed only through the use of ASTM E1333-14 test chambers. Based on consultations

with CARB staff, allowing correlation to be established through the use of ASTM D6007-14 test chambers in addition to the ASTM E1333-14 test chambers does not result in a decrease in testing reliability and yields comparable results if the ASTM D6007 test chambers have shown equivalence to the ASTM E1333 test chambers. To maintain consistency with this revision, EPA is also updating the definition of quality control limit (QCL) to allow for the use of the ASTM E1333 test chamber, or, upon showing equivalence, the ASTM D6007 test chamber.

PROPOSED RULE

HUD

Collection of information

HUD submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. Comments were due by October 27, 2017.

The Federal Standards and Procedural Regulations require manufactured home producers to place labels and notices in and on manufactured homes and mandate State and Private agencies participating in the Federal program to issue reports. Under revisions to the current reporting requirements and regulations, a streamlined procedure was added that will allow manufacturers, under certain circumstances, to complete construction of their homes on-site rather than in the factory without first having to obtain advance approval from HUD.

In addition, some information collected assists both HUD and State Agencies in locating manufactured homes with defects, which then would create the need for notification and/or correction by the manufacturer.

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond: Including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

SALES AND WARRANTIES

CASE LAW

Contract for deed – Flood damage

CASE NAME: *JERRY D. PETERSEN; T.O.; A.C.; AND M.C. APPELLANTS v. DAVID A. BLAKE; FREDA G. BLAKE; AND DERRICK BLAKE APPELLEES*
DATE: *10/13/2017*
CITATION: *Court of Appeals of Kentucky. Not Reported in S.W.3d. 2017 WL 4570678*

David and Freda Blake sold twenty-three acres of property to Petersen through a contract for deed. The property included a manufactured home that had been severely flood-damaged.

Although the written contract required Blake to remove all of his personal property, Petersen agreed to allow a tractor to remain on the property until Blake located a place to store it. In exchange, Petersen was to have use of the tractor.

When Petersen attempted to make a payment after the due date, Blake refused it because it did not include the required late fee. Petersen discontinued making payments, at least in part because Blake stated that

FEMA had declared the manufactured home destroyed and paid him for it, and thus FEMA owned it. Blake admitted that he lied.

Petersen refused to return the tractor. Blake eventually repossessed it and discovered damages beyond normal wear and tear.

The Blakes filed suit, seeking the balance due under the contract and to enforce their lien. The property flooded again. Blake testified that he was concerned for the safety of Petersen's children and of the property because the electricity had not been disconnected before the flood waters rose. Blake went to the property by boat to disconnect it himself.

But Blake waited until after sunset, and watched the house to make sure no lights came on and that no one was home. Blake also brought his son, Derek, who was armed with a shotgun. He also commented to a neighbor that he was going "to beat this man half to death."

Upon their arrival, Petersen's dogs came out of the house and Derek shot them. Both dogs required veterinary care. Petersen and his children were home at the time and confronted Blake and Derek. Blake disconnected the power, damaging the meter.

The Blakes filed an amended complaint, alleging that Petersen had damaged the tractor and was improperly harvesting timber from the property. Petersen filed a counterclaim for the trespass, the injuries to his dogs and for intentional infliction of emotional distress on his children.

The trial court concluded that Petersen had breached the contract and was not excused from performance based on Blake's misrepresentations about his ownership of the manufactured home, and the Blakes were entitled to foreclose.

The trial court also found that the Blakes had not abandoned the tractor. The parties had agreed to a bailment of the tractor for their mutual benefit and Petersen damaged the tractor through inappropriate and rough use.

The trial court found that David and Derek committed an armed trespass and awarded Petersen damages for injuries to the dogs and damages caused by Blake's improper disconnection of the electricity. The court also assessed punitive damages. However, the court found that Petersen failed to prove that the children suffered any significant emotional distress.

Petersen filed a motion for a new trial based upon newly-discovered evidence that the Blakes surrendered title to the manufactured home one week after it was damaged in the first flood. The trial court denied the motion, concluding that the evidence could have been discovered in time for trial and would not have compelled a different result.

On appeal, the Court found that the contract requiring Blake to remove any "personal property," did not necessarily exclude other agreements regarding specific items and the trial court properly considered parol evidence to determine the existence of an oral agreement regarding the tractor.

Nor did the trial court clearly err in finding that Petersen failed to establish an essential element of the children's IIED claim.

Finally, Petersen was aware of the condition of the manufactured home when he bought the property, and the surrendered title was a matter of public record. In the absence of a showing that Petersen exercised due diligence to discover this evidence prior to trial, the trial court did not clearly err or abuse its discretion in denying Petersen's motion for a new trial.

Affirmed.

LEGISLATION
California
Disclosures – Listing agent

2017 CA A 1357. Enacted 10/5/2017. Effective 1/1/2018.

Existing law requires the disclosure of specified information upon the transfer of residential real property or the resale of a manufactured home or mobilehome that is classified as personal property and intended for residential use.

This bill amends Cal. Civ. Code § 1102.4 to include a report or opinion, prepared by a C-39 roofing contractor who conducts a home inspection under specified circumstances, among those reports or opinions upon which a listing or selling agent may base his or her personal knowledge in order to be exempt from liability for any error, inaccuracy, or omission in the information that is required to be disclosed upon the transfer of residential real property.

LEGISLATION
California
Home ownership programs

2017 CA S 329. Enacted 10/12/2017. Effective 1/1/2018.

This bill adds Cal. Gov't. Code § 65852.35 to provide that all state and local programs designed to facilitate home ownership or residence, including loan origination and repayment programs, down payment assistance, and tax credits, shall include manufactured housing, to the extent feasible.

A California Housing Finance Agency loan program is deemed to comply with the above if it includes manufactured housing in conformance with a government sponsored enterprise's guidelines and California Housing Finance Agency's lending partners' guidelines.

LEGISLATION
California
Notice of sale – Transfer form

2017 CA S 542. Enacted 10/15/2017. Effective 1/1/2018.

This bill adds Cal. Health & Safety Code § 18107 to provide that an owner shall not be liable for taxes or fees pursuant to Article 6 (commencing with Section 18114) that accrue after the date of compliance if the owner does both of the following:

(1) Properly endorses and delivers the certificate of title to the transferee as provided in this code.

(2) Delivers to the Department of Housing and Community Development or deposits in the United States mail, addressed to the department, the completed notice of sale or transfer form developed by the Department.

This section shall not be construed to impose any additional duties upon an owner who sells or transfers ownership of a manufactured home or mobilehome pursuant to any other law.

For purposes of this section, an "owner" means an owner who is of record as a registered owner pursuant to this part, a legal owner as defined in Section 18005.8, or a junior lienholder as defined in Section 18005.3.

ADOPTED RULE
California
Fee and tax waivers

Effective 10/12/2017, this rule makes permanent emergency regulations establishing the AB 587 fee and tax waiver program for manufactured and mobile home owners who have not registered their homes with the

Department of Housing and Community Development (HCD), as required by law, due to accumulated and unpaid fees, taxes, and penalties.

The rule adds Cal. Code Regs. tit. 25, §§ 5535, 5535.5, 5536 and 5536.5.

Article 3.5: Article 3.5 is added to Chapter 5 of Title 25 of the Cal. Code Regs. to provide orderly and systematic implementation of the manufactured home/mobilehome registration Waiver Program. The regulations of the Waiver Program are for the convenience of the regulated public, including both homeowners and local tax collectors, while exercising their obligations and responsibilities under the AB 587 Waiver Program. While the registration process incorporates many requirements in other provisions of the California Health and Safety Code codifying the Registration and Titling Program chapter, its unique fee and tax waiver characteristics are appropriately set aside in a separate Article for easy reference and to avoid confusion with other registration requirements. The new title, "Registration of Manufactured Homes or Mobilehomes with Fee and Tax Waiver Program" summarizes the contents of the Article, indicating that it applies both to registration and the fee waiver program, which must be coupled according to the new law, and that it applies to both manufactured homes and mobilehomes.

Section 5535(a): This subsection, as a whole, establishes eligibility requirements for the Waiver Program. It also establishes December 31, 2019, as the end date of the Waiver Program as prescribed by Cal. Health & Safety Code § 18116.1. It makes clear that a "person" or "entity" (e.g., a corporation or partnership such as a mobilehome park operator) may utilize the new program. It also clarifies that the applicant for the Waiver Program must be a person "who asserts ownership" of a home, eliminating mere lessees of a home desiring to acquire it; proof of the chain of activities comprising potential ownership is addressed in subsequent sections and the provision of meeting other specific Waiver Program requirements. The Waiver Program only applies to manufactured homes/mobilehomes previously registered in California since any other such unit would not have a registration and titling record nor be in arrears of fees or taxes; and clearly provides that compliance with this new Article is the sole means of achieving an amendment to, or transfer of, the registration and titling records coupled with the fee and tax waiver of dues owed to either the Department or the County.

Section 5535(b): This subsection specifies that a person or entity may not obtain more than one fee and tax waiver in this new program, as mandated by Cal. Health & Safety Code § 18116.1. It also makes clear that a person who initially applies for the waiver program for a specific unit, and subsequently abandons that application for any reason, may apply again during the statutory period for the same home without being disqualified.

Section 5535(c): This subsection is necessary to ensure that only manufactured homes or mobilehomes previously registered in California qualify for the fee and tax waiver. The purpose for limiting the Waiver Program to units previously registered in California is two-fold: 1) they are the most impacted by lack of registration, and 2) units not previously registered with the Department do not exist in the registration and titling records.

Section 5535(d): This subsection is necessary in order for the Department to educate the public about the Waiver Program. This allows the Department to create informational and educational materials to assist the public in understanding the requirements for this program. It also provides that the Department will translate these documents into Spanish or other commonly used languages to the extent that resources are available in order to assure all stakeholders that the Department is maximizing its efforts to solicit applicants and to ensure that applicants can complete as much of the application requirements as possible prior to seeking assistance from the Department.

Section 5535.5: This section, as a whole, specifies the procedural requirements needed for the Department to efficiently and effectively enforce and administer the provisions of the Waiver Program as it applies to mobilehomes subject to the in-lieu tax fee (ILT) annual fees. A new separate section, Section 5536, is added for those subject to local property taxes (LPT) because the requirements and procedures are different for those homes. For clarity, the applicable statutory and regulatory sections are specified for the convenience of the regulated public. It also establishes the compliance requirements for an applicant in the Waiver Program.

Section 5535.5(a): Subsection (a) is added to specify the information which will be necessary for the new ILT Waiver Program application. This subsection also identifies the information which will be necessary in this new form.

Section 5535.5(a)(1): This paragraph specifies that particular individualized information about the applicant is necessary so that the Department can efficiently and effectively identify and communicate with the applicant. It requires the applicant's name, company name, if applicable, mailing address, telephone number, email address, and other unique identifying information which ensures the applicant is not abusing the limits of the Waiver Program applications discussed above.

Section 5535.5(a)(2) and (3): These paragraphs require specific unit information in order to establish the unit identifying information such as the decal number, trade name, serial numbers, and the physical location to ensure that the Department and the applicant have the correct information for the manufactured home/mobilehome, allowing the home to be identified in the Department's records.

Section 5535.5(a)(4): This paragraph requires the date of sale to establish one factor in the applicant's claim of ownership of the home. This date will determine the amount of waived fees and taxes the applicant is entitled to, as well as the amount of use tax due. The purchase price is required in order to calculate the amount of use tax as a result of the acquisition of the home. The date of sale and purchase price will be verified by the documents that the applicant provides to show proof of chain of ownership. The paragraph also allows for the applicant to present information regarding the date of "transfer", since a transfer (gift, addition of a co-owner, etc.) is not a "sale" and therefore no use tax would be due.

Section 5535.5(a)(5)(A) through (E): Subsection (a) requires the applicant to complete a "statement of facts signed under penalty of perjury". This is a standard format used throughout the chapter for registration and titling transactions. The requirement to sign under penalty of perjury is added because it assists in ensuring that the critical information is truthfully provided and also allows for administrative suspension of a fraudulent title under Cal. Health & Safety Code § 18122 or civil or criminal prosecution under Cal. Health & Safety Code § 18124.5. Subparagraphs (A) through (E) address the specific critical information provided in other provisions of this section: the applicant is applying for the Waiver Program; the applicant is providing information demonstrating ownership of the unit or how the applicant received ownership; the date of applicant's acquisition of the unit; the date of application is before the statutory deadline; and that the applicant has not previously obtained registration and fee benefits under the Waiver Program. Each of these factors is required by Cal. Health & Safety Code § 18116.1 or Cal. Code Regs. tit. 25, Chapter 5.

Section 5535.5(b): This subsection clarifies and directs that the applicant must comply with the requirements of either Cal. Code Regs. tit. 25, § 5530 or 5531, whichever is applicable. This direction is necessary to ensure that the applicant understands that it must also comply with all standard registration requirements involved in changes to registration of used manufactured homes or mobilehomes, as well as the Article. The choice between the sections 5530 and 5531 depends on whether or not a

manufactured home dealer is involved in the transaction, which is clear by the terms of those sections.

Section 5535.5(c): This subsection introduces information necessary for the applicant to register its home in addition to those in this Article and subsection (c), above. It specifies fees, procedures, and documents otherwise required for all transfers of ownership (new registration) set forth in Article 4 of this Chapter, commencing with Section 5540. It does not identify all such requirements, but highlights the most important and common issues.

Section 5535.5(c)(1) through (3): This paragraph identifies the most common fees and payments that the applicant will have to pay prior to a transfer of ownership of the unit and issuance of a new title. Subparagraph (1) relates to the vehicle license fees required by Cal. Code Regs. tit. 25, § 5660. Subparagraph (2) relates to the registration fees that must be paid, but as required by Cal. Health & Safety Code § 18116.1, allows for the waiver of fees based on the date the unit was transferred, the date of the application, or December 31, 2015, whichever is later. Subparagraph (3) relates to the payment of use taxes as required by Cal. Code Regs. tit. 25, § 5667.

Section 5535.5(c)(4): This subsection specifically requires the applicant to provide proof of the chain of ownership from the current owner on record with the Department to the current applicant through items such as original bill of sale, certificate of title, or application for duplicate certificate of title. This requirement is consistent with the general title transfer requirements of Chapter 5. It protects the existing recorded registered owner who may not have intended to transfer to the applicant, and also is a means to ensure that the date of acquisition, sales price, etc. are consistent with the general information provided pursuant to subsection (a). Depending on the nature of the proof of the acquisition, Chapter 5 allows alternative means of replacing a prior registered owner if that owner's written release cannot be obtained; for the clarity of the regulated user, that option is repeated in the subsection.

Section 5535.5(c)(5): This subsection specifically requires the applicant to provide proof of release, assumption or satisfaction (payment) by each legal owner (equivalent of a first mortgage) or junior lienholder (equivalent to second mortgage or other authorized liens) recorded against the title of the manufactured home/mobilehome. This requirement is consistent with the general title transfer requirements of Chapter 5, and protects the vested interests of these lenders and lienors. Depending on the nature of the liens and the lienholders, Chapter 5 allows alternative means of eliminating some liens if the lienholder cannot be located or refused to release the lien or provide a satisfaction (for the clarity of the regulated user, that option is repeated in this subsection).

Section 5535.5(c)(6): This subsection specifically requires the applicant to provide documentation proving the existence of other prerequisites to a transfer required in Chapter 5, including but not limited to the most common: proof of operative and properly installed smoke alarms (Cal. Code Regs. tit. 25, § 5545) and carbon monoxide alarms installed pursuant to Cal. Code Regs. tit. 25, §§ 4326 and 4328.

Section 5535.5(d): This subsection clarifies the prerequisites to the Department issuing a certificate of title and other titling documents. They include receipt of all documents required by this Article, payment of all fees, and the Department's determination that there has been compliance with the requirements of this Article. Upon compliance with this paragraph, the Department will issue the new certificate of title and other titling documents.

Section 5536: This section, as a whole, specifies the procedural requirements needed for the Department to efficiently and effectively enforce and administer the provisions of the Waiver Program as it applies to

manufactured homes/mobilehomes subject to local property tax (LPT) payments. The prior section, Section 5535.5, is added for those subject to in lieu fees (ILT) because the requirements and procedures are different for those ILT registered homes. For clarity, the applicable statutory and regulatory sections are specified for the convenience of the regulated public and because the county tax collectors will make specific decisions according to the laws that govern their activities. It also establishes the requirements for an applicant in the tax waiver program.

Section 5536(a): Subsection (a) is added to specify the information which will be necessary for the new LPT Waiver Program application. This subsection also identifies the information necessary in this new form.

Section 5536(a)(1): This paragraph specifies the particular individualized information about the applicant necessary for the Department to efficiently and effectively identify and communicate with the applicant. It requires the applicant's name, company name, if applicable, address, telephone number, email address, and other unique identifying information which ensures the applicant is not abusing the limits of the Waiver Program applications discussed above.

Section 5536(a)(2) and (3): This paragraph requires specific unit information: the decal number, trade name, serial numbers and the physical location to ensure that the Department and the applicant have the correct information for the manufactured home/mobilehome, allowing the home to be identified in both the Department's and local property tax collector's records.

Section 5536(a)(4): This paragraph requires the date of sale to establish the applicant's claim of ownership of the home. This date will determine the amount of waived fees and taxes to which the applicant is entitled. The date of sale and purchase price will be verified by the documents that the applicant provides to show proof of chain of ownership. This paragraph also allows for the applicant to present information regarding the date of "transfer", since this is another common means of acquiring a right of ownership.

Section 5536(a)(5)(A) through (F): Subsection (a)(5) requires the applicant to complete a "statement of facts signed under penalty of perjury." This is a standard format used throughout the chapter for registration and titling transactions. The requirement to sign under penalty of perjury is added because it assists to ensure that the critical information is truthfully provided and also allows for administrative suspension of a fraudulent title under Cal. Health & Safety Code § 18122 or civil or criminal prosecution under Cal. Health & Safety Code § 18124.5.

Subparagraphs (A) through (F) address the specific critical information provided in other provisions of this section: the applicant is applying for the Waiver Program; the applicant is providing information demonstrating ownership of the unit or how the applicant obtained ownership; the date of applicant's acquisition of the unit; the applicant has satisfied any state lien imposed pursuant to Cal. Gov't. Code § 16182; the date of application is before the statutory deadline; and the applicant has not previously obtained registration and fee benefits under the Waiver Program. Each of these factors is required by either Cal. Health & Safety Code § 18116.1 or Cal. Code Regs, tit. 25, Chapter 5.

Section 5536(b): This subsection clarifies and directs that the applicant must comply with the requirements of Cal. Code Regs, tit. 25, § 5530 if the transfer involved a licensed manufactured home dealer. This direction is necessary to ensure that the applicant understands that it must also comply with all standard registration requirements involved in changes to registration of used manufactured homes/mobilehomes, as well as this Article. It specifically exempts the tax clearance certificate requirement because that requirement is modified by the new Waiver Program.

Section 5536(c): This subsection clarifies that the applicant must comply with the requirements of Cal. Code Regs, tit. 25, § 5531 if the transfer did not involve a licensed manufactured home dealer. This direction is necessary to ensure that the applicant understands that it must also comply with all standard registration requirements involved in changes to registration of used manufactured homes/mobilehomes, as well as this Article. It specifically exempts the tax clearance certificate requirement because that requirement is modified by the new Waiver Program.

Section 5536(d): This subsection introduces information necessary for the applicant to register their home in addition to those in this Article and subsections (b) and (c), above. It specifies fees, procedures, and documents otherwise required for all transfers of ownership (new registration) set forth in Article 4 of this Chapter, commencing with Section 5540. It does not identify all such requirements, but highlights the most important and common issues.

Section 5536(d)(1): This paragraph clarifies for the benefit of the regulated user that the applicant must pay the applicable transfer fees indicated in Cal. Code Regs, tit. 25, § 5660.

Section 5536(d)(2): This paragraph clarifies that a releasing document is required if there is a State Controller's Office Tax Postponement Lien as provided in Cal. Gov't. Code § 16180. This is a requirement to transfer title for any manufactured home/mobilehome pursuant to Cal. Code Regs, tit. 25, Chapter 5.

Section 5536(d)(3): This subsection specifically requires the applicant to provide proof of the chain of ownership from the current owner on record with the Department to the current applicant through items such as original bill of sale, certificate of title, or application for duplicate certificate of title. This requirement is consistent with the general title transfer requirements of Cal. Code Regs, tit. 25, Chapter 5, it protects the existing recorded registered owner who may not have intended to transfer to the applicant, and also is a means to ensure that the date of acquisition, sales price, etc. are consistent with the general information provided pursuant to subsection (a). Depending on the nature of the proof of the acquisition, Cal. Code Regs, tit. 25, Chapter 5 allows alternative means of replacing a prior registered owner if that owner's written release cannot be obtained. For the clarity of the regulated user, that option is repeated in this subsection.

Subsection 5536(d)(5): This subsection specifically requires the applicant to provide proof of release, assumption or satisfaction (payment) by each legal owner (equivalent of a first mortgage) or junior lienholder (equivalent to second mortgage or other authorized liens) recorded against the title of the manufactured home/mobilehome. This requirement is consistent with the general title transfer requirements of Cal. Code Regs, tit. 25, Chapter 5, and protects the vested interests of these lenders and lienors. Depending on the nature of the liens and the lienholders, Cal. Code Regs, tit. 25, Chapter 5 allows alternative means of eliminating some liens if the lienholder cannot be located or refused to release the lien or provide a satisfaction. For the clarity of the regulated user, that option is repeated in this subsection.

Section 5536(d)(6): This subsection specifically requires the applicant to provide documentation proving compliance with the other prerequisites to a transfer required by Cal. Code Regs, tit. 25, Chapter 5, including, but not limited to: proof of operative and properly installed smoke alarms pursuant to Cal. Code Regs, tit. 25, § 5545, and carbon monoxide alarms pursuant to Cal. Code Regs, tit. 25, §§ 4326 and 4328.

Section 5536(e): This subsection clarifies the prerequisites for the Department to issue a conditional certificate of title. The prerequisites include: receipt of all documents required by this Article, payment of all fees, and the Department's determination that there has been

compliance with the requirements of this Article. Upon compliance with this paragraph, the Department will issue the conditional certificate of title. The LPT process differs from the ILT process because the Department still cannot issue a full certificate of title until the local property tax collector issues either a tax clearance certificate (the requirement under current law) or a tax liability certificate (a new requirement under AB 587).

The local tax collector in each of California's 58 counties does not have to consider a request from an applicant for a property tax waiver until receipt of the Department's conditional certificate of title. Upon receipt of the Department's conditional certificate of title, the local tax collector is mandated to act on that waiver and issue the tax waiver to the applicant. In order to protect the interests of the local tax collectors, the Department will develop and use a unique document titled "Conditional Certificate of Title". The information in that document is set forth in paragraphs (1) and (2).

Section 5536(e)(1): This paragraph describes the type of information on the face of the conditional certificate of title. Specifically, it includes both the applicant and the unit in order for the local tax collector to ensure that the tax waiver is provided to the correct person and with regard to the correct unit at the correct address. It also makes clear that the document is a conditional certificate of title rather than a regular certificate of title.

Section 5536(e)(2): This paragraph describes a disclosure statement on the face of the conditional certificate of title. This disclosure statement is established by Cal. Health & Safety Code § 18116.6 for one purpose: to require the local tax collector to calculate the amount of property tax to be waived on behalf of the applicant, and the amount still due from the applicant, based on the dates of acquisition provided for in AB 587. In order to protect possible buyers or transferees of that unit, and persons or entities who might be solicited to provide loans to the applicant whom believe a loan could be secured by the conditional certificate of title, the disclosure statement makes it clear that the conditional certificate of title may not be used for purposes of a resale or transfer of title to secure a loan or lien, or for any other purpose other than what is specified in AB 587.

Section 5536(f): This subsection provides clear direction to the applicant as to what must be submitted to the Department in order to receive the final certificate of title and related title documents.

Section 5536(f)(1) and (2): This paragraph implements Cal. Code Regs, tit. 25, Chapter 5 requirements, as amended by Cal. Health & Safety Code § 18116.1, by requiring either a Tax Clearance Certificate or a Tax Liability Certificate issued from the local tax collector. In addition, the applicant must submit the conditional certificate of title provided by the Department in order to ensure that it cannot be used for another purpose.

Section 5536(f)(3): This paragraph authorizes the Department to: 1) develop and use a form for this final transaction; 2) obtain unique identifying information regarding the applicant and the unit so that proper information is recorded on the title; and 3) request further information if needed to ensure that the applicant submitting the documents has met all requirements to complete the final transfer of title into the applicant's name.

Section 5536.5(a) and (b): These subsections establish beginning and ending dates for the Waiver Program. Subsection (a) states that the initial date of effectiveness of this new Article depends upon approval from the Office of Administrative Law (OAL). Subsection (b) provides a clear termination date provided by AB 587 (January 1, 2019), but allows the Department to complete processing of applications that were received prior to December 31, 2019, as required by law, until December 31, 2020.

BULLETIN

Texas

Hurricane Harvey – Damage assessments

Industry Bulletin Number 2017-002 (Damaged Homes and HUD Labels).

DISASTER ASSESSMENTS.

The TDHCA Manufactured Housing Division ("The Department") has communicated with all of the Retailers who may have been affected by Hurricane Harvey.

Approximately 127 new and used manufactured homes were identified as damaged and no longer in HUD conformance. For the new homes, the damage must be reported to the Manufacturer to determine if the home can be repaired and sold as a new home with the required one-year warranty or if the home will need to be salvaged.

For homes that can be repaired, the Manufacturer and its Design Approval Primary Inspection Agency (DAPIA) can authorize and facilitate the repairs and any applicable inspections.

For homes that cannot be repaired the Retailer should remove the HUD labels and send them to the Department along with an Application for Statement of Ownership electing the home as SALVAGE. These homes can only be sold to and/or rebuilt by a licensed retailer in accordance with 10 Tex. Admin. Code § 80.36, of the Administrative Rules.

PROPOSED RULE

Texas

Consumer complaints – Business use

This rule amends 10 Tex. Admin. Code § 80.73, Procedures for Handling Consumer Complaints, by adding subsection (i) to provide that if a purchaser of a manufactured home for business use has proof that they disclosed to the retailer in writing at the time of purchase that the purchaser intended for a person to be present in the home for regularly scheduled work shifts of not less than eight (8) hours prior to purchasing a manufactured home for business use they may file a complaint with the Department if the manufactured home is not habitable.

The complaint must be filed in writing to the Department within sixty (60) days of the later of the date of sale or the date of installation.

The retailer is required to make the home habitable if after a Department inspection it is determined to be inhabitable and the proper evidence was submitted demonstrating the intended business use of the manufactured home.

PROPOSED RULE

Texas

Consumer complaints – Business use

This rule amends 10 Tex. Admin. Code § 80.80 by changing the name of the Manufactured Homeowners' Recovery Trust Fund to the Manufactured Homeowner Consumer Claims Program.

TITLING AND PERFECTION

CASE LAW

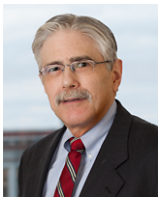
Liens – Priority

CASE NAME: *MAA Prospector Motor Lodge, LLC v. Palmer*
DATE: *09/28/2017*
CITATION: *Supreme Court of Utah. --- P.3d ----. 2017 WL 4323319*

In the September 2017 Update, we reported on 2DP Blanding, LLC v. Palmer, Supreme Court of Utah. --- P.3d ----. 2017 WL 3909824. In that case, the court found that, where a third-party purchaser at a foreclosure sale

did not necessarily have notice of an appeal, and the creditor did not obtain a stay during the appeal, the appellant lost all actionable rights to the property that had been lawfully conveyed to the third party, and any cloud his prior rights created on the property's title was thereby extinguished.

In this related case, the court determined that whether a lawful third-party purchaser at a foreclosure sale has notice of a pending appeal of the underlying foreclosure proceeding does not matter, if the creditor did not obtain a stay during the appeal.



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ABOUT MHI:

The Manufactured Housing Institute (MHI) is the only national trade organization representing all segments of the factory-built housing industry. MHI members include home builders, lenders, home retailers, community owners and managers, suppliers and 50-affiliated state organizations.

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ABOUT McGLINCHEY STAFFORD:

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