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!

This update will go down in manufactured housing history and not because of its length. Take note of the change to the definition of mortgage originator in the Truth in Lending Act. This change is so important that we moved it up front, instead of burying it in this lengthy monthly update.

Several states adopted legislation touching on emotional support animals and landlords. If you are a community operator in one of these states, be sure to take note.

A few states issued regulations regarding manufactured housing installation standards.

We hope you have a wonderful summer and Independence Day!

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OF SPECIAL INTEREST

LEGISLATION

United States

Mortgage loan originators – Disclosures

2017 US S 2155. Enacted 5/24/2018. Effective immediately.

This bill includes:

Sec. 107, Protecting access to manufactured homes, amending Section 103 of the Truth in Lending Act (15 U.S.C. 1602) to provide that term "mortgage originator" does not include any person who is--

"(i) not otherwise described in subparagraph (A) or (B) and who performs purely administrative or clerical tasks on behalf of a person who is described in any such subparagraph; or

"(ii) a retailer of manufactured or modular homes or an employee of the retailer if the retailer or employee, as applicable--

"(I) does not receive compensation or gain for engaging in activities described in subparagraph (A) that is in excess of any compensation or gain received in a comparable cash transaction;

"(II) discloses to the consumer--

"(aa) in writing any corporate affiliation with any creditor; and

"(bb) if the retailer has a corporate affiliation with any creditor, at least 1 unaffiliated creditor; and

"(III) does not directly negotiate with the consumer or lender on loan terms (including rates, fees, and other costs).

Sec. 109, No wait for lower mortgage rates, amending Section 129(b) of the Truth in Lending Act (15 U.S.C. 1639 (b)), to provide that if a creditor extends to a consumer a second offer of credit with a lower annual percentage rate, the transaction may be consummated without regard to the period specified in paragraph (1) with respect to the second offer. (This provision is limited to HOEPA loans)

(b) Sense of Congress.--It is the sense of Congress that, whereas the Bureau of Consumer Financial Protection issued a final rule entitled "Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)" (78 Fed. Reg. 79730 (December 31, 2013)) (in this subsection referred to as the "TRID Rule") to combine the disclosures a consumer receives in connection with applying for and closing on a mortgage loan, the Bureau of Consumer Financial Protection should endeavor to provide clearer, authoritative guidance on--

(1) the applicability of the TRID Rule to mortgage assumption transactions;

(2) the applicability of the TRID Rule to construction-to-permanent home loans, and the conditions under which those loans can be properly originated; and

(3) the extent to which lenders can rely on model disclosures published by the Bureau of Consumer Financial Protection without liability if recent changes to regulations are not reflected in the sample TRID Rule forms published by the Bureau of Consumer Financial Protection.

COMMUNITIES

CASE LAW

Lot rent - Purchase

CASE NAME: *Matlock v. Reck*
DATE: *04/27/2018*
CITATION: *Court of Appeals of Ohio, Second District, Montgomery County. Slip Copy. 2018 WL 1989587*

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Robyn Matlock sued Robert J. Reck (R & S Mobile Home Park), claiming she purchased a mobile home from Reck. Plaintiff was to pay $3,100.00 as a down payment and $900 in monthly installments of $100 for 9 months. This was an oral agreement and the transactions were cash transactions.

No disclosures were given about the condition of the home and Plaintiff was told that no repairs were needed. She claimed unsafe conditions were evident and sought judgment in the amount of $3,000.

Reck filed a motion to dismiss, asserting that Robyn lacked standing because she "was not a party to the contract for the sale of the mobile home. * * * Shawn Matlock is the sole purchaser listed on the contract." He further asserted that the complaint "should be dismissed as it fails to provide a copy of the purchase agreement at issue." Attached to the motion was a document dated October 15, 2014, referring to "rent." The top portion of the document reflected Shawn Matlock's personal information. "Sold As is" was handwritten and underlined. At the bottom of the document, the following was handwritten: "Dec 1-2015 Balance on trailer $800.00 Rent for March $775.83."

Reck alleged that Shawn breached the written agreement "in that he failed to pay the rent and the purchase price of the mobile home." According to Robert, Shawn owed him $775.83 in rent as well as $800.00 for the remainder of the purchase price of the mobile home, and $1,220.87 for "unpaid damages and/or necessary repairs to the premises."

The Magistrate denied Reck's motion for summary judgment.

The trial court found that the Plaintiff paid money to the Defendant in exchange for the sale of the mobile home. The Defendant's purported contract was not a clear contract as to the purchase of the mobile home. It failed to recite any intention to sell the mobile home, and further did not name the Plaintiff anywhere. Although the Defendant wrote "sold as is", by hand, there was no purchase price nor any other indication of the sale of the mobile home. Moreover, the Plaintiff's husband paid no consideration for the mobile home. Therefore, the Plaintiff's husband had no interest in this matter for the return of the Plaintiff's payment.

On appeal, the Court found that the Plaintiff paid the Defendant consideration in an amount equal to or greater than $3,000 in exchange for the mobile home. The Defendant's breach of the verbal contract for the sale of the mobile home entitled the Plaintiff to the same amount; Plaintiff only claimed $3,000, which was in fact less than what she paid the Defendant.

Further, evidence showed the Defendant breached his promise to sell a livable home to the Plaintiff. The Defendant received back his mobile home, and accordingly, the Plaintiff was entitled to restitution of money paid to the Defendant. Other testimony, along with exhibits admitted showed that the representations made verbally to the Plaintiff were deceiving, and reasonably caused the Plaintiff to rely on those representations when purchasing a home from an established place of business.

The Court found that the October 15, 2014 document did not reflect a purchase price or any intention to sell the mobile home. Further, while Reck repeatedly referred to the document as a "Lease-Purchase Agreement," the section under Shawn's identifying information was entitled "RENT," which was further inconsistent with the handwritten "Sold As is" at the top of the document. There was no suggestion that Shawn paid any consideration for the mobile home; Reck acknowledged that he received cash from Robyn.

Affirmed.

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LEGISLATION
Alabama
Service animals

2018 AL H 198. Enacted 3/15/2018. Effective 6/1/2018.

This bill creates the Alabama Assistance and Service Animal Integrity In Housing Act, Ala. Code §§ 24-8A-1 et seq.

The bill provides that a landlord who receives a request from a person to make an exception to a policy of the landlord that prohibits animals on the property of the landlord because the person requires the use of an assistance animal may require the person to produce reliable documentation of the following:

(1) A disability, only if the disability is not readily apparent or known to the landlord.

(2) A disability-related need for the animal, only if the disability-related need is not readily apparent or known to the landlord.

All documentation obtained pursuant to this section must be kept confidential in accordance with the Fair Housing Act and the Rehabilitation Act of 1973.

LEGISLATION
Arizona
Change in use - Park models

2018 AZ H 2168. Enacted 3/27/2018. Effective 8/3/2018.

(Note: portions of this bill were reported in the March 2018 McGlinchey Stafford Manufactured Housing Law Update)

This bill amends Ariz. Rev. Code Ann. § 33-1476.01, Change in use; notices; compensation for moving expenses; payments by the landlord; applicability, to provide that, if a tenant is required to move due to a change in use or redevelopment of the mobile home park, the tenant may collect payment from the mobile home relocation fund for the lesser of the actual moving expenses of relocating the mobile home to a new location that is within a one hundred-mile (formerly, fifty-mile) radius of the vacated mobile home park or the maximum of seven thousand five hundred dollars for a single section mobile home or twelve thousand five hundred dollars for a multisection mobile home.

The bill amends Ariz. Rev. Code Ann. § 33-1476.04, Relocations due to rent increase; mobile home relocation fund; applicability, to provide that, on approval, the tenant is eligible for the lesser of the actual moving expenses of relocating the mobile home or seven thousand five hundred dollars (formerly, $5,000) for a single-section mobile home or twelve thousand five hundred dollars (formerly, $10,000) for a multisection mobile home. Compensable moving expenses include the cost of taking down, moving and setting up the mobile home in the new location if the mobile home is relocated to a residential location within a one hundred-mile radius of the vacated mobile home park.

The bill amends Ariz. Rev. Code Ann. § 33-1476.05, Relocations due to change in age-restricted community use; payment from mobile home relocation fund; applicability, to provide that, on approval, the tenant is eligible for the lesser of the actual moving expenses of relocating the mobile home or seven thousand five hundred dollars (formerly, $5,000) for a single-section mobile home or twelve thousand five hundred dollars (formerly, $10,000) for a multisection mobile home. Compensable moving expenses include the cost of taking down, moving and setting up the mobile home in the new location if the mobile home is relocated to another age-restricted community within a one hundred-mile radius of the vacated mobile home park.

The bill amends Ariz. Rev. Code Ann. § 33-1485.01, Removal of mobile home from mobile home park;

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violation; joint and several liability, to provide that a tenant or a tenant's successor in interest shall provide the landlord with a written notification of intent to remove a mobile home from a mobile home space. The notification shall include the date the mobile home will be removed from the mobile home park, the name, address and telephone number of the person or entity that will be removing the mobile home from the mobile home park and the name, address and telephone number of the person or entity that will be the responsible party for restoring the mobile home space in accordance with the rental agreement and the mobile home park rules and regulations. If the responsible party is not licensed by the Arizona department of housing or the registrar of contractors, the landlord may require a security deposit or surety bond of not more than two thousand five hundred (formerly, $1,000) dollars minus the amount of any security deposit that was collected at the beginning of the tenant's tenancy. The security deposit or surety bond shall be paid or provided before work begins on restoring the mobile home space and shall secure the cost of restoration if the responsible party fails to completely restore the mobile home space. The landlord shall provide an accounting of any security deposit as prescribed in section 33-1431, subsection C.

The bill also amends Ariz. Rev. Stat. Ann. § 33-2101, Application; duration of stay; exclusions; notice and pleading requirements, which provides that this chapter (Chapter 19. Recreational Vehicle Long–Term Rental Space Act) applies to, regulates and determines rights, obligations and remedies for a recreational vehicle space THAT IS rented in a recreational vehicle park or mobile home park by the same tenant under a rental agreement for more than one hundred eighty consecutive days. The bill adds that, for a park model or park trailer that is located in a recreational vehicle park or mobile home park, this chapter applies if the space is rented by the same tenant for more than one hundred eighty consecutive days without regard to whether a rental agreement is executed.

The bill amends Ariz. Rev. Stat. Ann. § 33-2149, Change in use; notices; compensation for moving expenses; payments by the landlord; applicability, to provide that if a tenant is required to move due to a change in use or redevelopment of the park, the tenant may do any of the following:

(a) Collect payment from the mobile home relocation fund for the lesser of the actual moving expenses of relocating the park trailer or park model to a new location that is within a one hundred-mile (formerly, 50 mile) radius of the vacated park or the maximum of four thousand dollars. Moving expenses include the cost of stabilizing, taking down, moving and setting up the park trailer or park model in the new location.

LEGISLATION

Arizona

Eviction – Tenant property

2018 AZ S 1376. Enacted 4/3/2018. Effective 8/3/2018.

This bill amends Ariz. Rev. Stat. Ann. § 33-1368. Noncompliance with rental agreement by tenant; failure to pay rent; utility discontinuation; liability for guests; definition, to provide that the list of actions in the section which may constitute a material and irreparable breach of a tenant's lease is not exhaustive.

The bill provides that on the day following the day that a writ of restitution or execution is executed pursuant to section 12-1181, the landlord shall comply with section 33-1370, subsections D, E, F, G, H and I regarding the tenant's personal property.

The bill amends Ariz. Rev. Stat. Ann. § 33-1370 to provide that after the landlord retakes possession of the dwelling unit, and if the tenant's personal property remains in the dwelling unit, the landlord shall prepare an inventory and notify the tenant of the location and cost of storage of the personal property in the same manner prescribed in subsection A of this section.

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The landlord is not required to store the tenant's perishable items, plants and animals on behalf of the tenant. The landlord may remove or dispose of, as appropriate, the perishable items, including plants. At the landlord's discretion, the landlord may remove and dispose of any personal property in the dwelling unit that is contaminated or may be considered a biohazard or poses a health and safety risk. At the landlord's discretion, the tenant's abandoned animals may be immediately removed and released to a shelter or boarding facility. The landlord shall keep a record of the name and location of the shelter or boarding facility to which the animal was released. If the landlord does not immediately remove and release the abandoned animals to a shelter or boarding facility, the landlord shall provide reasonable care for the abandoned animals for the period prescribed by subsection f of this section. If the landlord is unable or unwilling to provide reasonable care to the abandoned animals, the landlord shall notify the county enforcement agent as defined in section 11-1001 or an animal control officer as prescribed in section 9-499.04 of the presence of the tenant's abandoned animals on the property to be seized pursuant to section 13-4281. The landlord is not liable for any actions taken in good faith related to the removal, release, seizure or care of the abandoned animals pursuant to this section.

The landlord shall hold the tenant's personal property for a period of fourteen calendar days (formerly, 10 days) after landlord retakes possession of the dwelling unit (formerly, after the landlord's declaration of abandonment). The landlord shall use reasonable care in moving and holding the tenant's personal property. If the landlord holds the property for this period and the tenant makes no reasonable effort to recover it, the landlord may donate the personal property to a qualifying charitable organization as defined in section 43-1088 or otherwise recognized charity or sell the property. If the landlords sells the property, the landlord shall retain the proceeds and apply them toward the tenant's outstanding rent or other costs that are covered in the lease agreement or otherwise provided for in this chapter or title 12, chapter 8 and that have been incurred by the landlord, and excess proceeds shall be mailed to the tenant at the tenant's last known address. A tenant does not have any right of access to that property until the actual removal and storage costs have been paid in full, except that the tenant may obtain clothing and the tools, apparatus and books of a trade or profession and any identification or financial documents, including all those related to the tenant's immigration status, employment status, public assistance or medical care. The landlord may destroy or otherwise dispose of some or all of the property if the landlord reasonably determines that the value of the property is so low that the cost of moving, storage and conducting a public sale exceeds the amount that would be realized from the sale. Any tax benefit associated with the donation of the personal property belongs to the tenant. A landlord that complies with this section is not liable for any loss to the tenant or any third party that results from moving, storing or donating any personal property left in the dwelling unit.

If the tenant notifies the landlord in writing on or before the date the landlord sells or otherwise disposes of the personal property that the tenant intends to remove the personal property from the dwelling unit or the place of safekeeping, the tenant has five days to reclaim the personal property. To reclaim the personal property the tenant must only pay the landlord for the cost of costs associated with removal and storage for the period the tenant's personal property remained in the landlord's safekeeping was stored. Except as provided in subsections e or i of this section for personal property exempt from storage requirements, within five days after a written offer by the tenant to pay the applicable storage or removal costs the landlord must surrender possession of the personal property in the landlord's possession to the tenant upon the tenant's tender of payment. If the landlord fails to surrender possession of the personal property to the tenant, the tenant may

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recover the possessions or an amount equal to the damages determined by the court if the landlord has destroyed or disposed of the possessions before the fourteen days specified in this section or after the tenant's offer to pay.

Notwithstanding subsections D, E, F and G of this section, if the tenant returns to the landlord the keys to the dwelling unit and there is personal property remaining in the dwelling unit, the landlord may immediately remove and dispose of the personal property without liability to the tenant or a third party unless the landlord and tenant have agreed in writing to some other treatment of the property.

LEGISLATION

Arizona

Tenant termination – Security deposits

2018 AZ H 2651. Enacted 5/16/2018. Effective 8/3/2018.

This bill amends Ariz. Rev. Stat. Ann. § 33-1318, Early termination by tenant; domestic violence; sexual assault; requirements; lock replacement; access refusal; treble damages; immunity, to provide that a tenant may terminate a rental agreement pursuant to this section if the tenant provides to the landlord written notice pursuant to this section that the tenant was the victim, in the tenant's dwelling, of sexual assault pursuant to section 13-1406.

The bill also amends Ariz. Rev. Stat. Ann. § 33-1321, Security deposits, to provide that, if the tenant does not dispute the deductions or the amount due and payable to the tenant within sixty days after the itemized list and amount due are mailed as prescribed by this subsection, the amount due to the tenant as set forth in the itemized list with any amount due is deemed valid and final and any further claims of the tenant are waived.

LEGISLATION

Colorado

Rental agreements – Payment receipts

2018 CO S 10. Enacted 3/22/2018. Effective 8/8/2018.

This bill adds Colo. Rev. Stat. § 38-12-801, Written rental agreement - copy – tenant, to provide that if there is a written rental agreement, then the landlord shall provide the tenant with a copy of the agreement that is signed by the landlord and the tenant, no later than the seventh day after the tenant has signed the agreement. A landlord may provide the tenant with an electronic copy of the agreement, unless the tenant requests a paper copy, in which case the landlord shall provide the tenant with a paper copy.

The bill also adds Colo. Rev. Stat. § 38-12-802, Tenant payment – receipts, to provide that, upon receiving any payment made in person by a tenant with cash or a money order, a landlord shall contemporaneously provide the tenant with a receipt indicating the amount the tenant paid and the date of payment. If the landlord receives a payment that is not delivered in person by the tenant with cash or a money order, if requested by the tenant, the landlord shall, within seven days after the request, provide the tenant with a receipt indicating the amount the tenant paid, the recipient, and the date of payment, unless there is already an existing procedure that provides a tenant with a record of the payment received that indicates the amount the tenant paid, the recipient, and the date of payment. A landlord may provide the tenant with an electronic receipt, unless the tenant requests a paper receipt, in which case the landlord shall provide the tenant with a paper receipt. For purposes of this section, a receipt may be included as part of a billing statement.

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LEGISLATION

Georgia

Abandoned homes

2017 GA H 381. Enacted 5/7/2018. Effective 5/1/2019.

This bill enacts the Abandoned Mobile Home Act, Ga. Code Ann. §§ 44-7-110 - 44-7-119.

The bill is intended to provide local governing authorities with the authority to appoint an agent to determine the condition of mobile homes in order for landowners to remove or restore abandoned mobile homes left on their property. It is the further purpose of the bill to provide landowners with the guidance necessary to efficiently and properly identify and dispose of abandoned mobile homes in the state while protecting the rights of any owner, lienholder, or other interested parties by performing a due diligence search, notification, and hearing process.

The bill provides that 'Abandoned mobile home' means a mobile home that has been left vacant by all tenants for at least 90 days without notice to the landowner and when there is evidence of one or more of the following:

(A) A tenant's failure to pay rent or fees for 90 days;

(B) Removal of most or all personal belongings from such mobile home;

(C) Cancellation of insurance for such mobile home;

(D) Termination of utility services to such mobile home; or

(E) A risk to public health, safety, welfare, or the environment due to such mobile home.

'Derelict' means an abandoned mobile home which is in need of extensive repair and is uninhabitable and unsafe due to the presence of one or more of the following conditions:

(A) Inadequate provisions for ventilation, light, air, or sanitation; or

(B) Damage caused by fire, flood, hurricane, tornado, earthquake, storm, or other natural catastrophe.

'Intact' means an abandoned mobile home which is in livable condition under applicable state law and the building and health codes of a local governing authority.

'Responsible party' means any person with an ownership interest in an abandoned mobile home as evidenced by the last payor of record as identified by a search of deeds or instruments of title, and shall include any holder of a recorded lien or the holder of any type of secured interest in such abandoned mobile home or a local government with a claim for unpaid taxes.

The bill provides that, at the request of a landowner, a local government agent shall be authorized to assess the condition of such abandoned mobile home. Upon inspection, the local government agent shall classify such abandoned mobile home as either intact or derelict and provide documentation citing such determination to the requesting landowner within 20 days of such request.

If a local government agent determines an abandoned mobile home to be intact, a landowner shall have a right to file a lien on such abandoned mobile home in the amount of any unpaid rent as of the date on which such lien is filed and accrued fees. Such lien may be foreclosed pursuant to the procedure set forth in Code Section 44-7-115.

If a local government agent determines an abandoned mobile home to be derelict, such agent shall post notice of such determination in a conspicuous location on such abandoned mobile home.

Upon receipt of a determination that an abandoned mobile home is derelict by a local government agent, and on the same date the notice required is posted, a landowner shall send notice, which notice shall include a listing of all responsible parties and last known

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addresses, to all responsible parties by registered or certified mail or statutory overnight delivery. Such notice shall include a statement that such responsible party is entitled to request a hearing in magistrate court within 90 days from the date that appears on such notice to contest the determination that such abandoned mobile home is derelict and that failure to request such hearing within 90 days of receipt of such notice shall entitle such landowner to dispose of the derelict mobile home.

If no responsible party can be ascertained, the landowner shall place an advertisement in a newspaper of general circulation in the county where such mobile home is located.

Neither the local governing authority nor the local government agent shall bear any liability with respect to any lawful actions taken to make a determination that a mobile home is abandoned or derelict.

Within the 90 day period described, a responsible party, or after the expiration of such 90 day period, a landowner shall petition a magistrate court to hold a hearing to confirm or deny the decision of a local government agent that an abandoned mobile home is derelict.

If, after a full hearing, the court determines the abandoned mobile home to be derelict, the court shall issue an order finding such mobile home to be derelict and authorizing the landowner to dispose of such derelict mobile home. A landowner issued such order shall dispose of such derelict mobile home within 180 days of the date of such order. Within 30 days of disposal of a derelict mobile home, the landowner shall notify the Department of Revenue and local tag agent of such disposal and such department shall cancel the certificate of title for such derelict mobile home, if such certificate exists.

The bill provides for the manner in which liens acquired upon an abandoned mobile home or intact mobile home shall be foreclosed.

The purchaser at a sale as authorized by this article shall receive a certified copy of the court order authorizing such sale. Any such purchaser may obtain a certificate of title to such mobile home by filing the required application, paying the required fees, and filing a certified copy of the order of the court with the Department of Revenue. The Department of Revenue shall then issue a certificate of title, which shall be free and clear of all liens and encumbrances.

The bill also amends Ga. Code Ann. § 15-10-2 to add that each magistrate court and each magistrate thereof shall have jurisdiction and power over:

(16) The foreclosure of liens on abandoned mobile homes as established in Article 6 of Chapter 7 of Title 44.

LEGISLATION

Georgia

Tenant termination – Security deposits

2017 GA H 834. Enacted 5/8 /2018. Effective 7/1/2018.

This bill adds Ga. Code Ann. § 44-7-23 to provide that a tenant may terminate his or her residential rental or lease agreement for real estate effective 30 days after providing the landlord with a written notice of termination when a civil family violence order or criminal family violence order has been issued:

(1) Protecting such tenant or his or her minor child; or

(2) Protecting such tenant when he or she is a joint tenant, or his or her minor child, even when such protected tenant had no obligation to pay rent to the landlord.

The notice to the landlord shall be accompanied by a copy of the applicable civil family violence order or criminal family violence order and a copy of the police report if such order was an ex parte temporary protective order.

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Upon termination of a residential rental or lease agreement under this Code section, the tenant may occupy the real estate until the termination is effective. Such tenant shall be liable for the rent due under such agreement prorated to the effective date of the termination, payable at such time as would have otherwise been required by the terms of such agreement, and for any delinquent or unpaid rent or other sums owed to the landlord prior to the termination of such agreement. The tenant shall not be liable for any other fees, rent, or damages due to the early termination of the tenancy. Notwithstanding any provision of law to the contrary, if a tenant terminates a residential rental or lease agreement pursuant to this Code section 14 or more days prior to occupancy, no damages or penalties of any kind will be assessable.

The bill also amends Ga. Code Ann. § 44-7-33 through 44-7-35, relating to lists of existing defects and of damages during tenancy, right of tenant to inspect and dissent, action to recover security deposit, return of security deposit, grounds for retention of part, delivery of statement and sum due to tenant, unclaimed deposit, court determination of disposition of deposit, and remedies for landlord's noncompliance.

Amended § 44-7-33 provides:

(1) Within three business days after the termination of the residential lease and vacation of the premises or the surrender and acceptance of the premises, whichever occurs first (formerly, after the date of the termination of occupancy), the landlord or his or her agent shall inspect the premises and compile a comprehensive list of any damage done to the premises which is the basis for any charge against the security deposit and the estimated dollar value of such damage. The tenant shall upon request have the right to inspect the premises and such list within five business days after the termination of the residential lease and vacation of the premises or the surrender and acceptance of the premises and the inspection by the landlord or his or her agent. If the tenant is present with the landlord at the time of the inspection, the landlord and the tenant shall sign the list, and this shall be conclusive evidence of the accuracy of the list. If the tenant refuses to sign the list, he or she shall state specifically in writing the items on the list to which he or she dissents and shall sign such statement of dissent. The landlord shall then comply with the provisions of Code Section 44-7-34.

(2) If the tenant vacates or surrenders the premises without notifying the landlord, the landlord shall (formerly, may) inspect the premises and compile a comprehensive list of any damage done to the premises which is the basis for any charge against the security deposit and the estimated dollar value of such damage within a reasonable time after discovering the premises has been surrendered by vacancy. The landlord shall sign the list and then comply with the provisions of Code Section 44-7-34.

A tenant who disputes the accuracy of the final damage list compiled pursuant to subsection (b) of this Code section and provided to the tenant pursuant to Code Section 44-7-34 may bring an action in any court of competent jurisdiction in this state to recover the portion of the security deposit which the tenant believes to be wrongfully withheld for damages to the premises. The tenant's claims shall be limited to those items to which the tenant specifically dissented in accordance with this Code section. If the tenant is present for the inspection of the premises after vacancy and signs the landlord's final damage list or fails to dissent specifically in accordance with this Code section, the tenant shall not be entitled to recover the security deposit or any other damages under Code Section 44-7-35, provided that the lists required under this Code section contain written notice of the tenant's duty to sign or to dissent to the list. A tenant who did not inspect the premises after vacancy or was not present for the landlord's inspection of the premises after vacancy and, in either case, did not request a copy of the landlord's final damage list shall

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have the right to dispute the damages assessed by the landlord.

The bill amends Ga. Code Ann. § 44-7-35 to provide that a landlord shall not be entitled to retain any portion of a security deposit if the final damage list required by subsection (b) of Code Section 44-7-33 was not compiled and made available to the tenant as required by such subsection.

LEGISLATION

Indiana
Service animals

2018 IN S 240. Enacted 3/21/2018. Effective 7/1/2018.

This bill adds Ind. Code § 22-9-7, Emotional Support Animals in Housing.

The bill provides that emotional support animals may be used by individuals with a range of physical, psychiatric, or intellectual disabilities.

To be prescribed an emotional support animal, the individual seeking an emotional support animal must have a verifiable disability. An animal does not need specific training to become an emotional support animal.

A person who offers to rent or otherwise make available a dwelling to an individual with a disability that is not readily apparent who seeks a reasonable accommodation for an emotional support animal in a dwelling may require that the individual provide written verification from a health service provider that:

(1) the individual is an individual with a disability;

(2) there is a disability related need for the emotional support animal to assist the individual; and

(3) the emotional support animal assists the individual in managing the individual's disability.

A person who offers to rent or otherwise make available a dwelling may evaluate any documents submitted with the request for a reasonable accommodation to verify the individual's disability related need for an emotional support animal.

A person who offers to rent or otherwise make available a dwelling may not require an individual with a disability to pay a fee to maintain an emotional support animal in the dwelling.

This chapter does not prohibit a person who offers to rent or otherwise make available a dwelling from requiring an individual with a disability who uses an emotional support animal from:

(1) complying with the terms of the rental agreement and other rules or regulations applicable to the dwelling on the same terms as other residents;

(2) paying for the cost of repairs that result from any damages to the dwelling that are caused by an emotional support animal in the same manner as a resident who maintains an animal that is not an emotional support animal in the dwelling; or

(3) signing an addendum or other agreement that sets forth the responsibilities of the owner of the emotional support animal.

Subject to any other federal, state, or local law, a person who offers to rent or otherwise make available a dwelling and permits an individual with a disability the use of an emotional support animal on the premises of a dwelling as a reasonable accommodation under:

(1) the Fair Housing Act (42 U.S.C. 3601 et seq.) and any amendments and regulations thereto;

(2) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and any amendments and regulations thereto;

(3) the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments and regulations thereto; or

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(4) any other applicable state or local law;

is not liable for an injury to another individual caused by an individual's emotional support animal.

LEGISLATION
Kentucky
Assistance animals

2018 KY H 329. Enacted 3/30/2018. Effective 7/13/2018.

This bill adds a new section to Ky. Rev. Stat. Ann., chapter 383 to provide that a person with a disability may submit a request for a reasonable accommodation to maintain an assistance animal in a dwelling. Unless the person's disability or disability-related need is readily apparent, the person receiving the request may ask the person making the request to provide reliable documentation of the disability-related need for an assistance animal, including documentation from any person with whom the person making the request has or has had a therapeutic relationship.

Unless the person making the request has a disability or disability-related need for an assistance animal that is readily apparent, a person receiving a request for a reasonable accommodation to maintain an assistance animal in a dwelling shall evaluate the request and any reliable supporting documentation to verify the disability-related need for the reasonable accommodation regarding an assistance animal. The person receiving the request may independently verify the authenticity of any supporting documentation.

A person with a disability who is granted a reasonable accommodation to maintain an assistance animal in a dwelling shall comply with the rental agreement or any rules and regulations of the property owner applicable to all residents that do not interfere with an equal opportunity to use and enjoy the dwelling and any common areas of the premises. The person shall not be required to pay a pet fee or deposit or any additional rent to maintain an assistance animal in a dwelling, but shall be responsible for any physical damages to the dwelling if residents who maintain pets are responsible for physical damages to the dwelling caused by pets. Nothing in this section shall be construed to affect any cause of action against any resident for other damages under the laws of the Commonwealth.

Notwithstanding any other law to the contrary, a landlord shall not be liable for injuries by a person's assistance animal permitted on the landlord's property as a reasonable accommodation to assist the person with a disability pursuant to the Fair Housing Act, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973, or any other federal, state, or local law.

LEGISLATION
Louisiana
Community water system

2018 LA H 894. Enacted 5/18/2018. Effective 8/1/2018.

This bill enacts La. Stat. Ann. § 40:1281.12, Community water systems; complaint records; review of records by state health officer.

The bill provides:

A.(1) Each community water system shall maintain a record of each complaint it receives by telephone, letter, or electronic mail from customers or users. The record of each complaint shall include the date the complaint was received, the service connection to which the complaint relates, the name of the customer or user making the complaint and associated contact information, and a brief description of the complaint. The log containing the record shall also include documentation of corrective actions that the community water system has implemented with respect to the matters detailed in the complaint.

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(2) The community water system shall retain the complaint records required by the provisions of this Subsection for at least five years, and shall make the records available to the Louisiana Department of Health upon request and without charge.

B.(1) If the state health officer or his designee reviews a complaint record provided for in this Section and, based upon the results of the review, recommends that any board member, owner, officer, or operator of a community water system, or any combination of these personnel, undertake an appropriate training course incorporating topics concerning proper customer service, customer relations, public relations, or related matters, then the personnel identified by the state health officer or his designee shall be required to undertake such training.

(2) The training provided for in this Subsection may be delivered by the state, a contractor of the state, or a state-recognized trainer.

C. If the state health officer deems it necessary, he may require any community water system to implement a demonstrated flushing program.

D. For the purposes of this Section, "community water system" shall have the meaning ascribed in La. Stat. Ann. § 40:5.8.

(La. Stat. Ann. § 40:5.8 provides: “Community water system” means a public water system that serves year-round residents within a residential setting. Examples of “community water systems” include systems serving municipalities, water districts, subdivisions, and mobile home parks)

LEGISLATION
Louisiana
Security deposits

☹

2018 LA S 466. Enacted 5/23/2018. Effective 1/1/2019.

This bill amends La. Stat. Ann. § 9:3252, relative to residential leases; to provide for the return of a security deposit.

The bill provides that the willful failure to comply with R.S. 9:3251 shall give the tenant or lessee the right to recover any portion of the security deposit wrongfully retained and three hundred dollars or twice the amount of the portion of the security deposit wrongfully retained (formerly, actual damages or two hundred dollars), whichever is greater, from the landlord or lessor, or from the lessor's successor in interest. Failure to remit within thirty days after written demand for a refund shall constitute willful failure.

LEGISLATION
Louisiana
Marshal and constable fees

☹

2018 LA H 315. Enacted 5/23/2018. Effective 8/1/2018.

This bill increases the fees for City Marshals and Constables services.

The bill amends La. Stat. Ann. § 13:5807 to increase the fees to which Constables and marshals, except in Orleans Parish and as provided by R.S. 13:5807.1, 5807.3, 5807.4, and 5807.5, shall be entitled in civil matters, including:

For serving notice of seizure and sale on one party and making a copy for recordation in the mortgage records, when necessary or required, and for making return for all, thirty dollars (formerly, $14.50). For service of each additional notice of seizure and return, thirty dollars (formerly, $10).

For preparing advertisement for newspapers, for each one hundred words or part thereof, thirty dollars (formerly, $11.50).

For executing writ of possession and writ of ejectment, thirty dollars (formerly, $10).

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For service of each notice to vacate on defendant or occupants, thirty dollars (formerly, $10).

If the defendant or occupants do not vacate the premises named in the writ upon service of notice to vacate and the marshal or constable is required to do anything further to obtain possession, he shall be entitled to an additional fee of thirty dollars (formerly, $10.50).

LEGISLATION
Maryland
Water and sewer

2018 MD S 468. Enacted 5/8/2018. Effective 10/1/2018.

This bill adds Md. Code Ann., Real Prop. § 8-205.1 to provide that a landlord that requires a tenant to make payments for water or sewer utility services to the landlord shall:

(1) use a written lease that provides notice that the tenant is responsible for making payments for water or sewer utility services to the landlord; and

(2) provide a copy of the water or sewer bill to the tenant.

LEGISLATION
Maryland
Landlord restrictions

2018 MD H 1553 and **2018 MD S 826**. Enacted 5/15/2018. Effective 10/1/2018.

This bill amends the Public Local Laws of Baltimore City Section 9-15 Article 4 to provide that an agent, a landlord, or an operator may not: without the consent of the tenant, intentionally:

(i) interrupt, terminate, or diminish any utility service furnished to the tenant, including, but not limited to, water, heat, light, electricity, gas, elevator, or similar services to which under the expressed or implied terms of the tenancy the tenant may be entitled;

(ii) remove furnishings, cooking facilities, appliances, or similar items to which under the express or implied terms of the tenancy the tenant may be entitled;

(iii) prevent the tenant from gaining reasonable access to the property by changing the locks and failing to provide the tenant with new keys;

(iv) remove outside doors or windows; or

(v) remove from the premises the tenant's personal property, furnishings, or any other items.

LEGISLATION
Nebraska
Servicemembers – Lease termination

2017 NE L 682. Enacted 4/11/2018. Effective 7/19/2018.

This bill enacts as yet uncodified sections to provide that, in addition to the rights and protections regarding consumer transactions, contracts, and service providers included under the federal Servicemembers Civil Relief Act, a servicemember may terminate, at any time after the date the servicemember receives military orders to relocate for a period of service of at least ninety days to a location that is not included in or covered under the contract, a lease of residential rental property, notwithstanding any provision to the contrary in the Uniform Residential Landlord and Tenant Act or any other provision of law, if the servicemember is required to move into government-owned or leased housing. This subdivision does not apply to a lease of residential rental property in which a spouse of a servicemember is a tenant in such residential rental property and government-owned or leased housing is not available to such spouse.

Termination of a contract must be made by delivery of a written or electronic notice of the termination and a

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copy of the servicemember's military orders to the service provider or lessor.

For any contract terminated under this section, the service provider or lessor under the contract shall not impose an early termination charge.

In the case of a rental agreement that provides for monthly payment of rent, termination of the rental agreement is effective thirty days after the first date on which the next rental payment is due and payable after the date on which the notice of termination is delivered. In the case of any other rental agreement, termination of the rental agreement is effective on the last day of the month following the month in which the notice of termination is delivered.

This section shall not be construed so as to impair or affect the obligation of any lawful contract in existence prior to the effective date of this act.

LEGISLATION
New Hampshire
Termination by lessee

2017 NH H 305. Enacted 5/15/2018. Effective 7/14/2018.

This bill amends N.H. Rev. Stat. Ann. § 540:11, Termination by Lessee, to provide that a tenancy at will, from month to month, may be terminated by the lessee upon 30 days' notice; provided that if the date of termination given in the notice does not coincide with the rent due date, the lessee is responsible for the rent for the entire month in which the notice expires, up to the next rent due date, unless the terms of the lease provide otherwise.

LEGISLATION
New Hampshire
Late fees

2017 NH H 1484. Enacted 5/25/2018. Effective 7/24/2018.

This bill amends N.H. Rev. Stat. Ann. § 205-A:6 to prohibit manufactured housing parks from charging a late fee for payments made within 7 days of the due date.

LEGISLATION
Oklahoma
Forcible entry and detainer - Service

2017 OK H 3281. Enacted 4/25/2018. Effective 11/1/2018.

This bill amends Okla. Stat. tit. 12, § 1148.5A, relating to forcible entry and detainer, to provide that if, in the exercise of reasonable diligence, service of the summons cannot be made upon the defendant personally nor upon any person residing upon the premises over fifteen years of age, and the court only renders judgment for possession, the claimant shall not be precluded from pursuing a subsequent action for the payment of rent or for other monetary relief.

LEGISLATION
Oklahoma
Service animals

2017 OK H 3282. Enacted 5/7/2018. Effective 11/1/2018.

This bill adds Okla. Stat. tit. 41, § 113.2 to authorize landlords to require tenants to provide documentation of disability when requesting service animal or assistance animal accommodations.

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A landlord shall not be liable for injuries by a person's assistance animal permitted on the landlord's property as a reasonable accommodation to assist the person with a disability.

LEGISLATION
Tennessee
Eviction - Service

2017 TN H 1667. Enacted 4/12/2018. Effective immediately.

This bill amends Tenn. Code Ann. § 29-18-115 to authorize, in an action by landlord to repossess landlord's property, service of process on a contractually named party or any adult found in possession of the premises.

LEGISLATION
Tennessee
Assistance animals

2017 TN H 2439. Enacted 5/15/2018. Effective 7/1/2018.

This bill adds Tenn. Code Ann. § 66-7-109(g) to provide that:

(1) It is deemed to be material noncompliance and default by the tenant with the rental agreement, if the tenant pretends to have a disability-related need for an assistance animal in order to obtain an exception to a provision in a rental agreement that prohibits pets or establishes limits on the types of pets that tenants may possess on residential rental property. As used in this subsection (g), "assistance animal" means an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one (1) or more identified symptoms or effects of a person's disability.

(2) The landlord may recover damages and obtain injunctive relief for any noncompliance and default by the tenant with the rental agreement under this subsection (g). The landlord may recover reasonable attorney's fees for breach of contract and nonpayment of rent as provided in the rental agreement.

(3) A provision in a rental agreement that authorizes a landlord to hold a tenant in breach or default of the rental agreement in accordance with this subsection (g) is not unconscionable and is fully enforceable.

The bill also adds Tenn. Code Ann. § 66-28-505(f) to provide that it is deemed to be material noncompliance by the tenant with the rental agreement, if the tenant pretends to have a disability-related need for an assistance animal in order to obtain an exception to a provision in a rental agreement that prohibits pets or establishes limits on the types of pets that tenants may possess on residential rental property. As used in this subsection (f), "assistance animal" means an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one (1) or more identified symptoms or effects of a person's disability.

Tenn. Code Ann. § 66-28-204 has been amended to add that a provision in a rental agreement that authorizes a landlord to hold a tenant in breach of the rental agreement in accordance with § 66-28-505(f) is not unconscionable and is fully enforceable.

LEGISLATION
Vermont
Lead poisoning

2017 VT H 736. Enacted 5/21/2018. Effective upon the Commissioner of Health's written confirmation to the Speaker of the House and the Senate President Pro Tempore, which shall be posted on the General Assembly's website, that the U.S. Environmental Protection Agency has authorized the program as administered by Vermont.

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This bill amends 18 Vt. Stat. Ann. Chapter 38, relating to Lead Poisoning Prevention.

LEGISLATION
Vermont
Rental Housing Advisory Board

2017 VT H 907. Enacted 5/28/2018. Effective 7/1/2018 (except as noted).

This bill adds Vt. Stat. Ann. tit 3, § 2477, RENTAL HOUSING ADVISORY BOARD, to provide that the Department of Housing and Community Development shall create the Rental Housing Advisory Board.

The Board shall have the following powers and duties:

(1) to act as an advisory group to the Governor, General Assembly, and appropriate State agencies on issues related to rental housing statutes, policies, and regulations;

(2) to report regularly to the Vermont Housing Council on its deliberations and recommendations;

(3) to work with appropriate State agencies on developing adequate data on the location and condition of Vermont's rental housing stock;

(4) to provide guidance to the State on the implementation of programs, policies, and regulations better to support decent, safe, and sanitary housing, including recommendations for incentives and programs to assist landlords with building repairs;

(5) to provide information to community partners, municipalities, landlords, and tenants, including educational materials on applicable rental housing statutes, regulations, and ordinances; and

(6) in preparation for a natural disaster, to collect information regarding available resources, disaster-related information, and community needs, and, in the event of a natural disaster, work with government authorities in charge of disaster response and communication.

The bill adds Vt. Stat. Ann. tit 3, § 2477, TASKS OF RENTAL HOUSING ADVISORY BOARD, to provide that, on or before January 15, 2019, the Rental Housing Advisory Board created in 3 V.S.A. Section 2477 shall submit to the General Assembly potential legislation or policy changes to better support decent, safe, and sanitary rental housing that address the following issues:

(1) recommendations for one State agency to be responsible for overseeing all aspects of rental housing code enforcement; and

(2) whether to retain or modify the current system of rental housing code enforcement, including current statutory provisions for issuance of health orders for violations of a rental housing health code.

The bill amends Vt. Stat. Ann. tit. 18, § 602a, DUTIES OF LOCAL HEALTH OFFICERS, to provide that:

(a) A local health officer, within his or her jurisdiction, shall:

(1) upon request of a landlord or tenant, or upon receipt of information regarding a condition that may be a public health hazard, conduct an investigation.

Formerly, this section provided: (a) A local health officer, within his or her jurisdiction, shall:(1) upon receipt of information regarding a condition that may be a public health hazard, conduct an investigation.

The bill adds Vt. Stat. Ann. tit. 18, § 603, RENTAL HOUSING SAFETY; INSPECTION REPORTS, to provide that when conducting an investigation of rental housing, a local health officer shall issue a written inspection report on the rental property using the protocols for implementing the Rental Housing Health Code of the Department or the municipality, in the case of a municipality that has established a code enforcement office.

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A written inspection report shall:

(A) contain findings of fact that serve as the basis of one or more violations;

(B) specify the requirements and timelines necessary to correct a violation;

(C) provide notice that the landlord is prohibited from renting the affected unit to a new tenant until the violation is corrected; and

(D) provide notice in plain language that the landlord and agents of the landlord must have access to the rental unit to make repairs as ordered by the health officer consistent with the access provisions in 9 V.S.A. Section 4460.

A local health officer shall provide a copy of the inspection report to the landlord and any tenants affected by a violation by delivering the report electronically, in person, by first class mail, or by leaving a copy at each unit affected by the deficiency.

If an entire property is affected by a violation, the local health officer shall post a copy of the inspection report in a common area of the property and include a prominent notice that the report shall not be removed until authorized by the local health officer.

A local health officer may impose a fine of not more than $100.00 per day for each violation that is not corrected by the date provided in the written inspection report, or when a unit is re-rented to a new tenant prior to the correction of a violation.

If a local health officer fails to conduct an investigation pursuant to section 602a of this title or fails to issue an inspection report pursuant to this section, a landlord or tenant may request that the Department, at its discretion, conduct an investigation or contact the local board of health to take action.

Effective 7/1/2019, the bill amends Vt. Stat. Ann. tit. 32, § 6069, LANDLORD CERTIFICATE, to add that:

(f) Annually, on or before October 31, the Department shall prepare and make available to a member of the public upon request a database in the form of a sortable spreadsheet that contains the following information for each rental unit for which the Department received a certificate pursuant to this section:

(1) name of owner or landlord;

(2) mailing address of landlord;

(3) location of rental unit;

(4) type of rental unit;

(5) number of units in building; and

(6) School Property Account Number.

DEFAULT SERVICING

CASE LAW

Repossession – Breach of the peace

CASE NAME: *Hyman v. Capital One Auto Finance*
DATE: *01/23/2018*
CITATION: *United States District Court, W.D. Pennsylvania. --- F.Supp.3d ----. 2018 WL 557925*

Plaintiff purchased a Toyota Corolla, financed by Capital One. Plaintiff was hospitalized and requested that Capital One defer her payments. Without notice to Plaintiff, Capital One "ordered" Commonwealth Recovery to repossess the automobile.

Plaintiff and her partner, Shyree, saw "a repo man" in the driveway attempting to repossess Plaintiff's car. The driveway was part of Plaintiff's property.

Plaintiff "told the repo man to get off her property." Shyree got into the car and closed the door.

The "repo man" called the Pennsylvania State Police. Multiple State Troopers arrived, including Defendants Devlin and Morris.

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The Pennsylvania State Troopers "assisted" the "repo man" in repossessing Plaintiff's vehicle, even though they "knew" that neither Capital One nor the "repo man" had received a court order or writ authorizing them to seize Plaintiff's car.

One of the Troopers stated that "if she does not willingly come out [of the car] we are going to have to remove her," despite being told Shyree's daughter, Makiba, a law student, that the "police cannot enforce a civil contract." One of the Troopers threatened to "break the window" and remove Shyree if she did not exit on her own.

Shyree ultimately exited the vehicle and a Trooper "directed" Plaintiff to "surrender her vehicle to the repo man."

Plaintiff filed suit for: (1) a FDCPA Claim against Commonwealth Recovery; (2) a claim under the Pennsylvania UCC against Capital One; (3) a conversion/trespass to chattels claim against Capital One and Commonwealth Recovery; (4) a trespass claim against Capital One and Commonwealth Recovery; (5) a 42 U.S.C. § 1983 claim against the Pennsylvania State Police, Defendants Morris, Devlin, and John Doe Troopers 1–10 in their official and in their individual capacities. Additionally, Plaintiff sought punitive damages against Capital One and Commonwealth Recovery for her conversion/trespass to chattels and trespass claims.

Capital One and Commonwealth Recovery moved to dismiss, except they did not ask to dismiss Plaintiff's FDCPA claim or her claim under the Pennsylvania UCC.

The Court noted that the Superior Court of Pennsylvania has recognized, that use of law enforcement agents in repossessions itself creates a constructive breach of the peace. Moreover, Comment 3 of the Pennsylvania UCC specifically provides that § 9609(a)-(b) "does not authorize a secured party who repossesses without judicial process to utilize the assistance of a law-enforcement officer." Plaintiff pleaded a plausible conversion claim against Capital One and Commonwealth Recovery.

Also, Plaintiff's facts gave rise to a reasonable inference that the "repo man" committed a breach of the peace by failing to vacate Plaintiff's private property and by summoning law enforcement officers to assist his repossession.

Also, Plaintiff claimed that the "repo man" remained on her property after she told him to leave.

Further, Plaintiff alleged facts that could support a reasonable inference that punitive damages were appropriate.

In addition, the repossession constituted a seizure because it was a "meaningful interference" with Plaintiff's possessory interest. Furthermore, Plaintiff alleged facts sufficient to form a reasonable inference that the seizure was unreasonable. Therefore, Plaintiff has alleged a plausible Fourth Amendment violation. Plaintiff also alleged a plausible procedural due process claim.

The Court further found that Plaintiff alleged facts sufficient to give rise to a reasonable inference that the Defendants Devlin and Morris committed the deprivations while operating under the color of state law and were not shielded by qualified immunity.

CASE LAW

Bankruptcy – Lien avoidance

CASE NAME: *Burkhart v. Grigsby*
DATE: *03/29/2018*
CITATION: *United States Court of Appeals, Fourth Circuit. 86 F.3d 434. 2018 WL 1526628*

At the time Michael and Teresa Burkhart filed a Chapter 13, their principal residence was encumbered by four liens. In order of seniority these were: a $609,500 lien held by Chase Bank, a $49,411.80 lien held by Tri-County

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Bank, a $78,289.11 lien also held by Tri-County, and a $105,995.75 lien held by PNC Bank. Chase Bank and PNC Bank filed proofs of claim with the bankruptcy court. Tri-County did not.

The Burkharts commenced an adversary proceeding to avoid the liens held by PNC and Tri-County. Their home was valued at $435,000, making the three junior liens unsecured and the senior lien only partially secured. The bankruptcy court entered a default judgment against the two banks, finding the liens completely underwater, and stripped PNC's lien. But the court refused to strip the liens held by Tri-County on the ground that § 506(d)(2) prohibits lien avoidance where no proof of claims have been filed.

The Burkharts appealed to the district court, which also refused to strip the liens.

The Burkharts again appealed.

The Court found that the ability of a Chapter 13 debtor to strip off an underwater lien stems from § 1322(b) not § 506(d). The former provision permits plans to modify the rights of holders of unsecured claims. Whether a creditor has an unsecured claim turns on the value of the underlying collateral not the mere existence of a security interest. And in making this determination, courts are not limited to valuing claims that have been filed and allowed. Where, as here, a senior lienholder is only partially secured, any junior lienholder is by definition the holder of an unsecured claim for purposes of § 1322(b), which may be stripped without the filing of a proof of claim.

Reversed and remanded.

CASE LAW

FDCPA – Dispute

☹

CASE NAME: *Evans v. Portfolio Recovery Associates, LLC*
DATE: *05/02/2018*
CITATION: *United States Court of Appeals, Seventh Circuit. --- F.3d ----. 2018 WL 2035315*

This appeal concerns four consolidated cases involving similar alleged violations of the FDCPA, 15 U.S.C. § 1692e(8).

Plaintiffs defaulted on credit cards, and Portfolio Recovery Associates ("PRA"), an Illinois debt collection agency, bought the accounts for collection. The Debtors Legal Clinic sent separate letters on behalf of each plaintiff to PRA, stating "the amount reported is not accurate." PRA later reported each debt to credit reporting agencies without noting that the debt was "disputed." Plaintiffs each filed a suit against PRA for violations of the FDCPA. The district courts granted summary judgment in favor of plaintiffs. PRA appealed, arguing: (1) plaintiffs did not have Article III standing; (2) the Letters did not "dispute" the debt within the meaning of § 1692e(8); (3) even if PRA violated the statute, the violation was not material; and (4) PRA had a bona fide error defense under § 1692k(c).

The Court first found that PRA's alleged violation of § 1692e(8) was sufficient to show an injury-in-fact. Because PRA failed to report to a credit reporting agency that the debt was disputed, the plaintiffs suffered a real risk of financial harm caused by an inaccurate credit rating.

Next, the Court found that Plaintiffs each sent a Letter to PRA which stated "the amount reported is not accurate." Despite receiving the Letters, PRA still reported plaintiffs' debts to credit reporting agencies without noting that the debt amounts were disputed. This was a clear violation of the statute. Section 1692e(8) does not require that the Letter use the word "dispute." Section

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1692e(8) does not affect debt collection practices at all, but instead merely requires a debt collector who knows or should know that a given debt is disputed to disclose its disputed status to persons inquiring about a consumer's credit history.

As to materiality, the Court found that § 1692e(8)'s command that debtors must "communicate that a disputed debt is disputed" is rooted in the basic fraud law principle that, if a debt collector elects to communicate credit information about a consumer, it must not omit a piece of information that is always material, namely, that the consumer has disputed a particular debt.

Finally, the Court found that a defendant can invoke the bona fide error defense only if it claims it made an error of fact, not an error of law.

Affirmed.

CASE LAW

FDCPA – Statute of limitations

CASE NAME: *Rotkiske v. Klemm*
DATE: *05/15/2018*
CITATION: *United States Court of Appeals, Third Circuit. --- F.3d ----. 2018 WL 2209120*

Kevin Rotkiske's credit card debt was referred to Klemm & Associates for collection. Klemm sued for payment in March 2008 and attempted service at an address where Rotkiske no longer lived, but eventually withdrew its suit when it was unable to locate him. Klemm tried again in January 2009, refiling its suit and attempting service at the same address. Unbeknownst to Rotkiske, somebody at that residence accepted service on his behalf, and Klemm obtained a default judgment for around $1,500. Rotkiske discovered the judgment when he applied for a mortgage in September 2014.

On June 29, 2015, Rotkiske sued Klemm and several associated individuals and entities asserting, inter alia, that the above-described collection efforts violated the FDCPA. Defendants moved to dismiss Rotkiske's FDCPA claim as untimely and the United States District Court for the Eastern District of Pennsylvania agreed. Rotkiske appealed.

The appeals court affirmed, finding that, under the FDCPA, "[a]n action to enforce any liability created by this subchapter may be brought in any appropriate United States district court ... within one year from the date on which the violation occurs." 15 U.S.C. § 1692k(d). In finding that the FDCPA's one-year limitations period begins to run when a would-be defendant violates the FDCPA, not when a potential plaintiff discovers or should have discovered the violation, the Court disagreed with the Fourth and Ninth Circuits which have held that the time begins to run not when the violation occurs, but when it is discovered.

CASE LAW

Bankruptcy – Value of collateral

CASE NAME: *In re Huff*
DATE: *05/20/2018*
CITATION: *United States Bankruptcy Court, S.D. West Virginia. Slip Copy. 2018 WL 2325390*

The Debtors became indebted to 21st Mortgage, pursuant to an Installment Contract, Security Agreement, and a Deed of Trust.

The indebtedness was secured by a Note and accompanying Deed of Trust on the property of the Debtors (the "Land"). Additionally, the indebtedness was secured by placing a lien on the Certificate of Title of a 2006 Clayton Manufactured Home (the "Home"). The Land and the Home are collectively referred to as the "Collateral."

The original principal amount of the indebtedness was $59,123.10.

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The Debtors' filed a Chapter 13 and 21st filed a Proof of Claim, listing the secured indebtedness as $50,437.31.

Debtors' Plan valued the Collateral at $30,000. 21st filed the Objection to the Plan.

The Court held an evidentiary hearing on the Plan and the Objection.

Debtors' appraiser, Estep, valued the Home, separate from the land, at $16,000.00, on the cost approach method, relying mainly on the NADA database. Estep inspected the Home, finding it to be of "fair" quality and a "bare-bones" home. Estep based his valuation on several components, including substandard underpinning and windows, holes in the siding, leaking bathroom faucets, and unstable decking, among other deficiencies. These concerns influenced Estep to conclude that the Home was constructed from substandard materials, qualifying it for the "fair condition" label. The Court noted that during cross examination Estep admitted that he did not input the Home's specific tradename in the NADA database worksheet.

Next, Estep testified to the condition of the land. He personally walked the land and indicated that the legal description of the land was .34 acres. He noted that the land was rough and littered with solid waste. Importantly, the land did not have its own septic system, and the size of the land was too small to install a private septic system. Mr. Estep utilized recent and comparably sized property in the area to value the land at $4,000. Accordingly, Estep valued the Collateral at $20,000.

21st's appraiser, Keck, also personally inspected the Home and concluded that the Home was in "good condition." On cross examination, however, Keck testified that the base price of the Home was $32,316 and that he made upward adjustments of over $11,000 to reach his final valuation of $44,500. In the Court's estimation, that observation diminished Mr. Keck's credibility.

Additionally, 21st called Millard Ellis, a real estate agent, to value the land. Mr. Ellis testified that the value of the land was $10,000.00. This valuation opinion was based off his supporting Broker Price Opinion, believing it was composed of one acre. However, on cross examination, Mr. Ellis was made aware that the land was only 0.34 acre. Ellis noted that he could not find the property because the road was re-named. Mr. Ellis used a 19 acre property and a one acre, flat property to reach the $10,000 valuation. The Court did not find persuasive Mr. Ellis's testimony regarding the valuation of the land.

The Court found that the value of the Collateral was $28,000.

CASE LAW

Bankruptcy – Dischargeability

CASE NAME: *Lamar, Archer & Cofrin, LLP v. Appling*
DATE: *06/04/2018*
CITATION: *Supreme Court of the United States. --- S.Ct. ----. 2018 WL 2465174*

Respondent R. Scott Appling fell behind on his bills owed to petitioner law firm Lamar, Archer & Cofrin, LLP, which threatened to withdraw representation and place a lien on its work product if Appling did not pay. Appling told Lamar that he could cover owed and future legal expenses with an expected tax refund, so Lamar agreed to continue representation. However, Appling used the refund, which was for much less than he had stated, for business expenses. When he met with Lamar again, he told the firm he was still waiting on the refund, so Lamar agreed to complete pending litigation. Appling never paid the final invoice, so Lamar sued him and obtained a judgment. Shortly thereafter, Appling and his wife filed for Chapter 7 bankruptcy. Lamar initiated an adversary proceeding against Appling in Bankruptcy Court, arguing that his debt to Lamar was nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A), which bars discharge of specified debts arising from "false pretenses, a false representation, or actual fraud, other than a statement

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respecting the debtor's ... financial condition." Appling moved to dismiss on the ground that his alleged misrepresentations were "statement[s] respecting the debtor's ... financial condition," which § 523(a)(2)(B) requires to be "in writing." The Bankruptcy Court disagreed and denied Appling's motion. Finding that Appling knowingly made two false representations on which Lamar justifiably relied and that Lamar incurred damages as a result, the court concluded that Appling's debt to Lamar was nondischargeable under § 523(a)(2)(A). The District Court affirmed, but the Eleventh Circuit reversed, holding that a "statement respecting the debtor's financial condition" may include a statement about a single asset. Because Appling's statements were not in writing, the court held, § 523(a)(2)(B) did not bar him from discharging his debt to Lamar.

The United State Supreme Court held that a statement about a single asset can be a "statement respecting the debtor's financial condition" under § 523(a)(2).

The Court noted that the case was about what constitutes a "statement respecting the debtor's financial condition." Does a statement about a single asset qualify, or must the statement be about the debtor's overall financial status? If the single-asset statements here qualify as "respecting the debtor's financial condition," § 523(a)(2)(B) posed no bar to discharge because they were not made in writing. If, however, the statements fall into the more general category of "false pretenses, ... false representation, or actual fraud," § 523(a)(2)(A), for which there is no writing requirement, the associated debt would be deemed nondischargeable.

The court found that the statutory language makes plain that a statement about a single asset can be a "statement respecting the debtor's financial condition." If that statement is not in writing, then, the associated debt may be discharged, even if the statement was false.

LEGISLATION

Iowa

Redemption period

2017 IA H 2234. Enacted 5/16/2018. Effective 7/1/2018.

This bill amends Iowa Code § 535.8(4)(e)(1) to provide that when a foreclosure of a mortgage on real property results from the enforcement of a due-on-sale clause, the mortgagor may redeem the real property at any time within eighteen months (formerly, 3 years) from the day of sale under the levy, and the mortgagor shall, in the meantime, be entitled to the possession thereof; and for the first fifteen (formerly, 30) months thereafter such right of redemption is exclusive. Any real property redeemed by the debtor shall thereafter be free and clear from any liability for any unpaid portion of the judgment under which the real property was sold. The right of redemption established by this paragraph is not subject to waiver by the mortgagor and the period of redemption established by this paragraph shall not be reduced. The times for redemption by creditors provided in sections 628.5, 628.15, and 628.16 shall be extended to sixteen (formerly, 33) months in any case in which the mortgagor's period for redemption is extended by this paragraph. This paragraph does not apply to foreclosure of a mortgage if for any reason other than enforcement of a due-on-sale clause. This paragraph does not apply if the lender establishes, based on reasonable criteria which are not more restrictive than those used to evaluate new mortgage-loan applications, that the security interest or the likelihood of repayment is impaired as a result of the transfer of interest.

The bill amends Iowa Code § 615.1A, Execution on judgment — claim for rent, to provide that after the expiration of a period of ten (formerly, 5) years from the date of entry of judgment of a court not of record, or twenty years from the date of entry of judgment of a court of record (adding, of a court not of record, or twenty years from the date of entry of judgment of a

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court of record), in an action on a claim for rent, exclusive of any time during which execution on the judgment was stayed pending a bankruptcy action or order of court, such judgment shall be null and void, all liens shall be extinguished, and no execution shall be issued. However, in the event that the judgment or the right to collect thereon is sold or otherwise assigned for value to a third party other than a state or federally chartered bank or credit union, such judgment shall be null and void, all liens shall be extinguished, and no execution shall be issued after the expiration of two years from the date of entry of the judgment, exclusive of any time during which execution on the judgment was stayed pending a bankruptcy action or order of court.

Iowa Code § 628.26, Agreement to reduce period of redemption, has been amended to provide that the mortgagor and the mortgagee of real property consisting of less than ten acres in size may agree and provide in the mortgage instrument that the period of redemption after sale on foreclosure of said mortgage as set forth in section 628.3 be reduced to six months, or reduced to three months if the property is not used for an agricultural purpose as defined in section 535.13 (adding, or reduced to three months if the property is not used for an agricultural purpose as defined in section 535.13), provided in all cases under this section that the mortgagee waives in the foreclosure action any rights to a deficiency judgment against the mortgagor which might arise out of the foreclosure proceedings. In such event the debtor will, in the meantime, be entitled to the possession of said real property; and if such redemption period is so reduced, for the first two (formerly, 3) months after sale such right of redemption shall be exclusive to the debtor, and the time periods in sections 628.5, 628.15, and 628.16, shall be reduced to three (formerly, 4) months.

The bill amends Iowa Code § 654.20(1) to amend the notice to be provided to be included in a an election for foreclosure without redemption to provide:

NOTICE

THE PLAINTIFF HAS ELECTED FORECLOSURE WITHOUT REDEMPTION. THIS MEANS THAT THE SALE OF THE MORTGAGED PROPERTY WILL OCCUR PROMPTLY AFTER ENTRY OF JUDGMENT UNLESS YOU FILE WITH THE COURT A WRITTEN DEMAND TO DELAY THE SALE. IF YOU FILE A WRITTEN DEMAND, THE SALE WILL BE DELAYED UNTIL SIX (formerly, 12) MONTHS (or THREE (formerly, 6) MONTHS if the petition includes a waiver of deficiency judgment) FROM ENTRY OF JUDGMENT IF THE MORTGAGED PROPERTY IS YOUR RESIDENCE AND IS A ONE-FAMILY OR TWO-FAMILY DWELLING OR UNTIL TWO MONTHS FROM ENTRY OF JUDGMENT IF THE MORTGAGED PROPERTY IS NOT YOUR RESIDENCE OR IS YOUR RESIDENCE BUT NOT A ONE-FAMILY OR TWO-FAMILY DWELLING. YOU WILL HAVE NO RIGHT OF REDEMPTION AFTER THE SALE. THE PURCHASER AT THE SALE WILL BE ENTITLED TO IMMEDIATE POSSESSION OF THE MORTGAGED PROPERTY. YOU MAY PURCHASE AT THE SALE.

The bill amends Iowa Code § 654.21, Demand for delay of sale, to provide that, at any time prior to entry of judgment, the mortgagor may file a demand for delay of sale. If the demand is filed, the sale shall be held promptly after the expiration of two months from entry of judgment. However, if the demand is filed and the mortgaged property is the residence of the mortgagor and is a one-family or two-family dwelling, the sale shall be held promptly after the expiration of six (formerly, 12) months, or three (formerly, 6) months if the petition includes a waiver of deficiency judgment, from entry of judgment.

LEGISLATION

Minnesota

Repossession notice

2017 MN S 3326. Enacted 5/20/2018. Effective 5/21/2018.

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This bill amends Minn. Stat. § 327.665, Required notice; contents of notice, under the Manufactured Home Repossession Security Act, to change the telephone number for the Minnesota Home Ownership Center in the notice to the debtor of the right to reinstate.

The new number is 866-462-6466 (formerly, 866-462-6646).

ADOPTED RULE

Pennsylvania

Mortgage servicing

Effective 4/28/2018, this rule adopts Mortgage Servicing Rules, adding 10 Pa. Code §§ 59.1—59.15.

Includes:

§59.1. Purpose.

§59.2. Scope.

§59.3. Definitions.

§59.4. General disclosure requirements.

§59.5. Mortgage servicing transfers.

§59.6. Timely escrow payments and treatment of escrow account balances.

§59.7. Error resolution procedures.

§59.8. Requests for information.

§59.9. Force-placed insurance.

§59.10. General servicing policies, procedures, and requirements.

§59.11. Early intervention requirements for certain borrowers.

§59.12. Continuity of contact.

§59.13. Loss mitigation procedures.

§59.14. Coordination with existing law.

§59.15. Additional notices.

(Note: these adopted rules add §59.14, Coordination with existing law, to the rules published 2/6/2018)

INSTALLATION

ADOPTED RULE

Arizona

Approval of plans – Installation standards

Effective 6/30/2018, this rule amends the rules of the Board of Manufactured Housing, Ariz. Admin. Code §§ R4-34-101 thru -104, -201 thru -204, -301 thru -303, -401 and -402, -501 thru -506, -601, -603 thru -607, -701 thru -707, -801 thru -805, -1001.

ARTICLE 1. GENERAL.

Ariz. Admin. Code § R4-34-101 provides that "Agency" means the seller or purchaser of a used home has given a licensed salesperson written legal authority to act on behalf of the seller or purchaser when dealing with a third party. The written legal authority is also binding on the salesperson's licensed and employing retailer.

"Agency disclosure" means a document that specifies the person a licensed salesperson or licensed retailer represents in a brokered transaction.

"Agent" means a licensed retailer authorized to act on behalf of a seller, purchaser, or both the seller and purchaser of a used home.

"Branch location" means a satellite office, in addition to the principal office, where business may be transacted.

"Certificate" means an Arizona Insignia of Approval, which is required for modular manufacture, installation, reconstruction, or rehabilitation work.

"Commercial" means an FBB (factory-built building) with a use-occupancy classification other than single-family dwelling.

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"Consummation of sale, as defined at A.R.S. § 41-1001, includes filing an Affidavit of Affixture, if applicable.

"Field installed" means components, equipment, and/or construction that is to be completed or installed at the site. Field installed does not include reconstruction.

"Repair" means work performed on a manufactured home, mobile home, or FBB to restore the building to a habitable condition but does not impact the original structure, electrical, plumbing, HVAC, mechanical, use occupancy, or energy design.

"Residential" means a building with a use-occupancy classification of single family dwelling or as governed by the International Residential Code.

"Site" means a parcel of land bounded by a property line or a designated portion of a public right-of-way.

"Site work" means soil preparation including soil analysis, grading, drainage, utility trenches, and foundation systems preparation, and field-installed work including terminal and connections, on-site utility connections, accessibility structures, egress paths, parking, lighting, landscaping, and similar work.

The amended rule deletes the definition of "Lease with option to purchase," defined as a lease under which the lessee has the right to purchase the leased property for a specified price and terms.

The rule deletes the definition of "Reconstruction," defined as construction work performed on a manufactured home, mobile home, or factory-built building for the purpose of restoring the unit to a usable condition, but does not include work limited to remodeling, replacing, or repairing appliances or components that will not significantly alter the systems or structural integrity of the living area.

The rule repeals Ariz. Admin. Code § R4-34-104. Workmanship Standards.

This rule provided that:

A. All work shall be performed in a professional manner.

B. All work shall be performed in accordance with any applicable building code and professional industry standards.

C. If there is a conflict between professional standards and building code requirements, the latter will prevail.

ARTICLE 2. LICENSING.

The rule amends Ariz. Admin. Code § R4-34-201, General, to provide:

A. Within five business days following receipt, the Department shall perform an administrative review of an application. If the Department determines the application is incomplete, the applicant will be provided an opportunity to complete the application. Within 14 business days following receipt of a completed application and after the applicant has passed any required license examination the Department shall issue a conditional license.

B. Corporate applicants shall submit a copy of their organizational documents, including articles of incorporation or organization, with all amendments, filed with the state, as applicable, and a certificate of good standing to transact business in this state.

C. An exemption from any applicable examination requirement may be granted if a new license application identifies the same license classification and the same qualifying party listed on a previously held license, provided the previous license was in good standing before it expired.

D. A licensee will be given notice that a conditional license is automatically effective as a permanent license to transact business within the scope of the license following review and approval by the Department of the licensee's criminal background analysis.

E. Unless otherwise stated in the purchase contract, a retailer selling a mobile home, manufactured home, or

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FBB shall know the ordinances of the town, city, or county where the unit is to be installed regardless of whether the retailer is obligated to provide for the delivery or installation of the unit.

Ariz. Admin. Code § R4-34-203, Retailers, has been amended to add that a retailer of manufactured homes or mobile homes may sell new or used accessory structures included in a sales agreement.

A broker of manufactured homes or mobile homes:

a. Acts as an agent for the sale or exchange of used manufactured homes or mobile homes, or that may include existing or new accessory structures included in a sales agreement;

b. Contracts with licensed installers or contractors for the installation of manufactured homes, mobile homes, and existing or new accessory structures included in a sales agreement.

The rule amends Ariz. Admin. Code § R4-34-204, Installers, to provide that installers' license applications fall into one of the following license classes:

I-10C General installer of manufactured homes, mobile homes, or residential single-family FBBs:

a. Installs manufactured homes, mobile homes, or residential single-family FBBs on foundation systems;

b. Installs ground anchors and tie-downs for manufactured homes or mobile homes;

c. Connects water, sanitary waste, gas, and electrical systems of all amperages to the proper onsite utility terminals provided by others;

d. Installs evaporative cooler systems on manufactured homes, mobile homes, or residential single-family FBBs including providing roof jack to cooler ducts, installing exterior duct work, providing electrical service and controls to cooler from nearest supply source, providing water to the cooler from nearest fresh water source, and performing cooler repair work;

e. Performs repair work, replaces or newly installs to existing mobile homes, manufactured homes, and residential single-family FBBs items in subsections (A)(1)(a) through (d); and

f. May subcontract to a properly licensed entity for installation of a manufactured home, mobile home, or residential single-family FBB or installation of an accessory structure in conjunction with installation of a home.

I-10D Installer of accessory structures attached to manufactured homes, mobile homes, or residential single-family FBBs including installation of prefabricated accessory structure units, on-site constructed accessory structures, concrete footings or slabs for accessory structures, and plumbing, electrical, and mechanical equipment. An I-10 Installer may subcontract, as needed, to a properly licensed installer or contractor for installation of any accessory-structure item under this subsection.

I-10G Master installer manufactured homes, mobile homes, residential single-family FBBs, or commercial single-story FBBs built on a chassis with an electrical system no greater than 400 amperes is qualified to perform the work described under subsections (A)(1) and (2) and installs HVAC systems including electrical wiring, gas connections, and ductwork. An I-10G Master installer does not provide service, maintenance, repair, or discharging, adding, or reclaiming refrigerants or any other work requiring certification. An I-10G Master installer may subcontract to a properly licensed entity for installation of any item under this subsection.

ARTICLE 3. SALES TRANSACTIONS AND TRUST OR ESCROW ACCOUNT.

The rule amends Ariz. Admin. Code § R4-34-301, Transaction Copies, to provide that a retailer shall maintain a record of all transaction documents. In every transaction:

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1. The retailer shall provide the purchaser with a copy of all completed and signed documents;

2. If a purchaser is unrepresented, the listing retailer (formerly, broker) shall provide the purchaser with a copy of all completed and signed documents; and

3. If a transaction is co-brokered, the listing retailer (formerly, broker) shall provide a copy of the listing agreement to the selling retailer (formerly, broker), and the selling retailer (formerly, broker) shall provide a copy of all completed and signed documents to the listing retailer (formerly, broker).

The rule amends Ariz. Admin. Code § R4-34-302, Advertising, to provide that a retailer (formerly, broker) shall not advertise or market a used home for more than the listed price.

The rule amends Ariz. Admin. Code § R4-34-303, Brokered Transactions, to provide that:

A. A broker shall provide a copy of the agency disclosure to the party or parties the broker represents.

B. A seller's retailer (formerly, broker) shall place all earnest money deposits received in connection with the sales transaction in the retailer's (formerly, broker's) trust or escrow account in accordance with A.R.S. § 41-4030 (formerly, 41-2180) except as provided in the exception provision.

F. If the seller or broker (adding, or broker) elects to finance the unpaid balance reflected on the offer to purchase or purchase contract, the broker (formerly, agent) shall:

1. Maintain evidence of the original portion of the purchase price being financed by the seller or broker (formerly, agent), and

2. Maintain evidence the title has been transferred into the name of the purchaser and the lienholder's position has been secured on the title.

The adopted rule deletes: D. Upon consummation of a brokered transaction, the purchaser's broker shall provide the purchaser with a closing statement that includes an accounting of all expenses charged to the purchaser, all pro rations, and all credits.

ARTICLE 4. SURETY BONDS.

The rule amends Ariz. Admin. Code § R4-34-401, Surety Bond Forms, to provide:

A. Manufacturers, installers, and retailers (except those with a D-8B license classification) shall submit the applicable surety bond amount from the list in R4-34-502, with a form provided by the Office of Administration.

B (new). A rider to the bond is required for the following changes:

1. Location of the licensee's principal place of business,

2. Business name,

3. Branch address,

4. License classification, or

5. Bond amount.

Ariz. Admin. Code § R4-34-402, Cash Deposits, has been amended to provide that:

A. Unless exempt under R4-34-401, an applicant or licensee posting cash in lieu of a commercial surety bond shall pay by:

1. Cash. A cash deposit is not transferrable and shall be made in the name of the applicant or licensee as the name appears on the license application or issued license; or

2. Certified or cashier's check or bank or postal money order made payable to the Arizona State Treasurer.

The rule deletes the options of:

3. Cashier's check payable to the State Treasurer,

4. Bank money order payable to the State Treasurer, or

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5. Postal money order payable to the State Treasurer.

The rule provides that a cash deposit may be withdrawn by the applicant, licensee, or someone having authority to act on behalf of the applicant or licensee, under the following circumstances:

1. A license is not issued to the applicant;

2. The license has been terminated, expired, revoked, or voluntarily cancelled for at least two years, and there are no outstanding claims; and

3. Two years after the licensee files a commercial surety bond that replaces the cash deposit, if there are no outstanding claims.

ARTICLE 6. MANUFACTURING, CONSTRUCTION, AND INSPECTION.

The rule amends Ariz. Admin. Code § R4-34-606, Rehabilitation of Mobile Homes, to provide:

A. A rehabilitation permit shall be obtained from the Department before any modification of a mobile home.

B. The following requirements shall be met for a mobile home to be issued a certificate of compliance:

1. A smoke detector shall be installed in each sleeping room and outside each separate sleeping area in the immediate vicinity of the sleeping rooms. Each smoke detector shall be installed in accordance with its manufacturer's instructions;

2. The walls, ceilings, and doors of each gas-fired furnace and water-heater compartment shall be lined with 5/16-inch gypsum board, except a door to a compartment that opens to the exterior of the mobile home, in which case the door may be all metal construction. All exterior compartments shall seal to the interior of the mobile home;

3. Each room designated expressly for sleeping purposes shall have at least one outside egress window or an approved exit device. The window or exit shall have a minimum clear dimension of 22 inches, a minimum clear opening of five square feet, and the bottom of the exit is not more than 36 inches above the floor;

4. The electrical system is tested for continuity to ensure metallic parts are properly bonded, tested for operation to demonstrate all equipment is connected and in working order, and given a polarity check to determine connections are proper. The electrical system is properly protected for the required amperage load. If aluminum conductors are used, all receptacles and switches rated 20 amperes or less and directly connected to the aluminum conductors are marked CO/ALR. Exterior receptacles other than heat tape receptacles, are of the ground fault circuit interrupter (GFI) type. Conductors of dissimilar metals (Copper/Aluminum/or Copper Clad Aluminum) are connected in accordance with Section 110-14 of the National Electrical Code incorporated at R4-36-102; and

5. Gas piping shall be tested with methods incorporated at R4-36-102. All gas furnaces and water heaters shall be installed in compliance with materials incorporated at R4-36-102. If a rehabilitated mobile home is to be relocated following rehabilitation, the gas tests required under this subsection may be performed and inspected at the time of installation at the new location.

C. The rehabilitated mobile home shall be inspected by the Department to ascertain compliance with subsection (B).

D. The Department shall issue a certification of compliance for each rehabilitated mobile home in compliance with subsection (B), and affix an insignia of approval to the exterior wall nearest the point of entrance of the electrical service.

E. If the Department determines a rehabilitated mobile home does not comply with subsection (B), the Department shall serve a correction notice and require the person served to make corrections within the time specified in the notice. The Department shall determine the time for correction based on the severity of the hazard or violation in and the time reasonably needed to

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make the correction. The Department shall allow at least 30 days for correction unless an imminent safety hazard is found, or if the correction has been unreasonably delayed, in which case, the Department shall serve an Order to Vacate to the person occupying the rehabilitated mobile home.

F. The Department shall serve an Order to Vacate on a person occupying a non-rehabilitated unit mobile home within five days after an inspection of the non-rehabilitated mobile home finds an imminent safety hazard.

The rule deletes the provision that, upon request the office shall issue a waiver for a unit that does not qualify as a mobile home. The category of the unit shall be determined by inspection of the unit or presentation of acceptable documents. The waiver fee is applicable if the category of the unit can be determined to qualify for exemption. If an inspection of the unit is necessary to determine its category, the inspection fee shall apply.

ARTICLE 7. PLAN APPROVALS.

The rule amends Ariz. Admin. Code § R4-34-701, General, to provide that:

A. Before construction of a manufactured home or FBB, a manufacturer shall submit to the office:

1. The compliance assurance manual required by R4-34-702, and

2. The drawings and specifications required by R4-34-703.

B. Before performing one of the following, a person shall obtain plan approval:

1. Under R4-34-704(A) for an alteration,

2. Under R4-34-704(B) for a reconstruction,

3. Under R4-34-705 to install an attached accessory structure.

C. Within 20 business days after receiving a plan submitted under subsection (B), the Department shall perform an administrative review of the plan submittal and if incomplete, require the licensee to provide a complete plan submittal. Within 20 business days after receiving a complete plan submittal, the Department shall approve or disapprove the plan submittal.

D. A person that submits a plan under subsection (B) shall ensure the plan conforms with the following standards:

1. Each page is at least 8 ½ X 11 inches;

2. The font is at least eight point;

3. The cover page includes an index and provides a 3 X 5 inch blank space near the title block;

4. The plan and all details and calculations are sealed by an Arizona registered engineer; and

5. The plan is consistent with all applicable standards incorporated at R4-34-102.

The adopted rule deletes:

H. A manufacturer, retailer, or installer shall update each plan so that it is consistent with current standards and codes adopted by the Board. Supplements are acceptable for this purpose.

I. Plans submitted shall be stamped by an engineer registered by the State of Arizona.

The rule amends Ariz. Admin. Code § R4-34-702, Compliance (formerly, Quality) Assurance Manualsm by deleting:

A. A manufacturer of manufactured homes shall prepare the quality assurance manual required by R4-34-102(1).

The rule adds Ariz. Admin. Code § R4-34-707, Designated Flood-prone Area Installation, to provide:

Before installing a manufactured home, mobile home, or FBB in a designated flood-prone area, an installer shall submit and obtain Department approval of an installation plan that includes the following:

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1. A site plan showing the location of the manufactured home, mobile home, or FBB;

2. A copy of the designated flood-use permit or flood design conditions issued by the local enforcement agency showing the flood zone type and regulatory and base flood elevations;

3. A site-specific foundation plan that is prepared by an Arizona registered engineer and includes:

a. A complete set of drawings indicating dimensions and details of the foundation system and anchoring to prevent floatation, collapse, or lateral movement of the structure;

b. A complete list of materials cross identified to the drawings in subsection (3)(a) showing how the materials will be used;

c. An indication of how to place to the structure to ensure the bottom frame of the structure is at or above the regulatory flood elevation;

d. An indication of where to place external utilities and equipment to ensure they are at or above the regulatory flood elevation;

e. If the structure has an enclosed foundation, an indication of where to place flood vents or other openings; and

f. All calculations used to determine all load conditions; and

4. Written approval of the information in subsections (1) through (3) from the local flood-district administrator having authority.

ARTICLE 8. PERMITS AND INSTALLATION.

The rule amends Ariz. Admin. Code § R4-34-801, Permits, to provide:

A. A properly licensed entity or person shall obtain a permit for the installation of a manufactured home, mobile home, FBB, or attached accessory structure, or rehabilitation of a mobile home.

B. The Department shall issue or deny a permit within seven business days after the application is received. If a permit is denied, corrections to the application shall be submitted to the Department within 20 business days after the denial.

C. A properly licensed entity or person shall obtain all required permits, such as zoning, flood plain, and installation, from the Department or local jurisdiction before beginning any installation work. All permits shall be posted in a conspicuous location onsite. The properly licensed entity or person who contracts to perform the installation and a licensed installer who subcontracts to perform the installation shall verify that all required permits have been obtained from the Department and local jurisdiction before beginning the installation.

D. A local jurisdiction that has entered into agreement with the Department may issue installation permits and conduct inspections.

E. The Department or a local jurisdiction participating in the installation inspection program shall charge the permit fee expressly authorized under A.R.S. § 41-2144(A)(4). The fee charged by the local jurisdiction shall not exceed the amount established by the Board.

F. Every permit, except a special-use permit, expires six months after the permit is issued. The Department may extend the permit for good cause if a written request is made to the Department before the permit expires and the fee established by the Board under A.R.S. § 41-2144(A)(4) is paid again.

G. A licensee or consumer shall obtain a certificate of occupancy from the Department before occupying a manufactured home, mobile home, or FBB.

H. The permit holder, owner, or contractor shall request all required inspections.

I. At the time of a scheduled inspection, the permit holder, owner, or contractor shall ensure all work to be inspected is accessible (opened) and no work is performed beyond the point indicated for each

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successive inspection without first obtaining approval from the Department.

J. The permit holder, owner, or contractor shall ensure approved plans and all applicable manuals be available onsite.

Ariz. Admin. Code § R4-34-802, General Installation, has been amended to provide:

A. A properly licensed entity shall complete and affix an Arizona Installation Certificate (formerly, Insignia of Approval) to a manufactured home, mobile home, or FBB at the end of the unit, opposite the hitch and adjacent to the manufacturer certificate or HUD label (formerly, approximately one foot up from the floor and one foot in from the road side). The properly licensed entity shall affix the Arizona Installation Certificate before calling the Department for an inspection.

B. A properly licensed entity shall make a report by the 15th of each month regarding compliance with subsection (A).

C. Before beginning an installation, a properly licensed entity shall check with the local jurisdiction regarding frost-line requirements governing permanent foundations or utilities.

D. A properly licensed entity shall install all new manufactured homes, used manufactured homes, and mobile homes according to the materials incorporated by reference in R4-34-102.

E. (new) Before making an installation, a properly licensed entity shall perform or contract with a qualified professional to assess the site and soil and make site preparations necessary to ensure the site is compatible with the manufactured home, mobile home, or residential single-family FBB to be installed. The entity that actually assesses and prepares the site has primary responsibility for the work performed. The entity that contracts to have the site assessment and preparation done, if different, has secondary responsibility for the work performed.

F. (new) Installation of a manufactured home, mobile home, or FBB shall be performed only by a properly licensed entity.

The adopted rule repeals Ariz. Admin. Code §§ R4-34-803, Soil and Materials, and R4-34-804, Utilities,

The rule amends Ariz. Admin. Code § R4-34-805, Accessory Structures, to provide that "Attached," as used in A.R.S. § 41-2142(1), means fastened by any means to a manufactured home, mobile home, or residential single-family FBB at the time of installation (deleting, and removable without degradation of the structural integrity of the unit).

The adopted rule deletes:

C. An installer or contractor installing manufactured homes, mobile homes, or factory-built buildings shall provide an opening that permits access to the underfloor area. If the access is through the skirting, retaining wall, or perimeter foundation wall, the access opening shall measure at least 18 inches by 24 inches.

D. The Department shall approve or reject plans as prescribed in R4-34-705.

E. Above or Below Grade Skirting

1. For all skirting, an installer or contractor shall:

a. Provide an 18 inch by 24 inch minimum access crawl hole,

b. Ventilate skirting according to the International Building Code or the International Residential Code, and

c. Install skirting according to this Chapter or the manufacturer's instructions if the instructions are consistent with this Chapter.

2. For below grade skirting, an installer or contractor shall design and construct skirting as a retaining wall according to the International Building Code or the International Residential Code.

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ADOPTED RULE

Colorado

Installation standards - Fees

Effective 7/1/2018, this rule adopts 8 Colo. Code Regs. § 1302-14, NON-RESIDENTIAL AND RESIDENTIAL FACTORY-BUILT STRUCTURES; SELLERS OF MANUFACTURED HOMES; MANUFACTURED HOME INSTALLATIONS; AND HOTELS, MOTELS, AND MULTI-FAMILY DWELLINGS IN THOSE AREAS OF THE STATE WHERE NO STANDARDS EXIST.

The rules include;

Rule 1. Definitions.

Rule 2. Codes and Standards, including Manufactured Housing Installation Standards.

These standards and guidelines are available through the Division of Housing in the form of the "Installation Handbook" located at: https://www.colorado.gov/dola/division-housing.

Pursuant to section 24-32-3310, C.R.S., nothing in this rule is intended to interfere with the right of a local jurisdiction to enforce its rules governing the installation of a manufactured home as long as those rules are not inconsistent with this rule. Pursuant to section 24-32-3318, C.R.S., a local jurisdiction may not adopt less stringent standards for the installation of a manufactured home than those adopted by the Division and may not adopt a different standard without express consent by the Division. However, a local jurisdiction may adopt unique public safety requirements such as weight restrictions for snow loads or wind shear factors.

An installation of a HUD home in the state must be performed in strict accordance with the applicable manufacturer's installation instructions. The value of the allowable bearing capacity of the soil the home will rest on must be recorded by the installer on the Installation Authorization form or other Division-approved form and justification for higher values also provided if it is determined to be other than 1,500 psf.

Alternate Standards (for older homes or homes that do not include the manufacturer's installation instructions) – installation must be in accordance with the alternate standards adopted by the Division and State Housing Board.

The installer shall verify data plates provided with a HUD home prior to installation in the state of Colorado. The data plate shall be matched with the home (serial numbers).

Rule 3. Fees.

The State Housing Board establishes the following schedule of fees, which are not subject to refund, are due in advance, and must accompany the appropriate application, except for certain inspection fees:

3.1 Annual registration fees:

3.1.1 Plant/Factory: $600.00

3.1.2 Inspection Agency: $250.00

3.1.3 Seller/Dealer: $200.00

3.1.4 Installer: $150.00

3.1.5 Independent Inspector: $450.00

3.2 Plan checking fees:

3.2.1 Finished space: $0.25 per sq. ft. ($160 min.)

3.2.2 Unfinished space (attics, lofts, garages, etc.): $0.10 per sq. ft.

3.3 Supplemental plan check fee (revisions, etc.): $0.10 per sq. ft. ($50 min.)

3.4 Third party oversight plan check fee: $0.15 per sq. ft. ($100 min.)

3.5 Insignia fees:

3.5.1 Primary Insignia: $125.00

3.5.2 Additional Floor Tag: $125.00

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3.5.3 Inspection-only Tag: $125.00

3.5.4 Component-only Insignia: $125.00

3.5.5 Modification Insignia: $125.00

3.5.6 Installation Insignia (free for participating jurisdictions): $60.00

3.6 Inspection fees:

3.6.1 Plant/Factory certification inspection fee: $350.00 per inspection

3.6.2 Oversight inspection fee, including re-inspections: $270.00 per inspection/address

3.6.3 Special inspection fee:

(a) In-State: $50.00 per hour, per inspection, plus trip expenses of travel, food, lodging, parking, car-rental, etc., as allowed in state fiscal rules for per diem and travel.

(b) Out-of-State units manufactured in Colorado: $350.00 per inspection/unit

3.6.4 Modification inspection fee: $175.00

3.6.5 Installation inspection fee:

(a) Rough or Final: $200.00

(b) Re-inspection fee: $200.00

3.6.6 Non Compliance/Prohibited Sale/Red Tag fee: $250.00

3.8.1 Pursuant to section 24-32-3315(7)(a), the Division of Housing does not charge for certification of installers.

3.8.2 The Division of Housing waives the fee for certification of an independent inspector.

3.8.3 The Division of Housing does not charge for installer or inspector exams.

3.8.4 The Division of Housing waives the fee for certification of a plant/factory.

3.8.5 The Division of Housing may waive fees for plan reviews and unit certifications that are to be subsidized under local, state, or federal housing programs for low-income households, e.g. Habitat for Humanity.

3.8.6 The Division of Housing waives the insignia fee for local jurisdictions that perform installation inspections as authorized participating jurisdictions.

Rule 5. Sellers, Dealers, Distributors, Retailers of Manufactured Homes.

Registration.

Sellers, which include dealers, distributors, and retailers, of HUD and modular homes are required to be actively registered at each retail location in Colorado through the Division of Housing.

Advertising or manufactured home sales activities outside of a retail location require a single registration.

As part of the registration process, a seller is required to establish and maintain an escrow account for all manufactured housing down payments.

A seller is also required to establish and maintain in the amount of $50,000 one of the following:

A. A letter of credit,

B. Certificate of deposit, or

C. Surety bond.

Each registration may have more than one location under a parent company in which case each location will be required to pay the annual registration fee provided in Rule 3 of these rules, and can be under the parent company bond, certificate of deposit, or surety bond.

A registration is active for one (year) from the date of issuance and a registered seller will be notified a reminder to renew thirty (30) calendar days in advance of the expiration date of his or her registration.

A new application, new letter of credit, certificate of deposit, or surety bond is required to be submitted for the renewed year.

Rule 6. Installations of Manufactured Homes.

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Every manufactured home installed after the effective date of these regulations that is installed at a temporary or permanent location and is designed and commonly used for occupancy by persons for residential purposes, must display a certificate of installation (insignia) issued by the Division of Housing or an authorized party, certifying that the unit is installed in compliance with the manufacturer's instructions or the Manufactured Housing Installation Standards adopted by the Division in Rule 2.

Prior to beginning the installation of a manufactured home, the owner, or registered or certified installer of a manufactured home must submit a complete and accurate application for an Installation Authorization issued by the Division or certified installation inspector.

Owners, registered, and certified installers must display an Installation Authorization at the site of the manufactured home to be installed until an installation certification is attached to the manufactured home certifying that the installation is in compliance with the manufacturer's installation instructions or the installation standards in Rule 2 of these rules.

A copy of the manufacturer's instructions must be available at the time of installation and inspection of each new manufactured home. The installer must be responsible to maintain a copy of the manufacturer's instructions at the installation site.

Whenever the applicable standard (manufacturer's instructions, NFPA 225, etc.) for the installation of the manufactured home is not present at the time of the inspection, the inspector may fail the inspection and require a re-inspection of the installation. All costs of the inspection and any following re-inspection will be borne by the installer.

Where the manufactured home is used or is being relocated, the manufacturer's instructions will be used if available. If the manufacturer's instructions are not available, the applicable adopted alternate standard listed in Rule 2 of these rules will be used for the installation.

All manufactured homes that are found to be in compliance with installation requirements must have a certification of installation (copper colored 3"x5" insignia) completed and permanently attached by the inspector making the inspection or a certified installer.

A certification of installation must be affixed at the interior electrical panel or under the sink cabinet.

Application of the certification of installation is evidence that permanent utility service may be established.

When a manufactured home installation is not found in compliance with the applicable manufacturer's instructions or other applicable standard or approved plans, the installer and/or manufacturer must be notified in writing by the inspector.

Determination of the responsible party must be to the best of the inspector's knowledge. Documentation must be provided to the inspector for changing a responsible party.

The inspector may, at the time of the inspection, include in the inspection report instructions for the installer to call for re-inspection at any stage to prevent cover up of any part of the installation requiring re-inspection by the inspector.

The installer must pay for any repairs required to bring the installation into compliance. The installer will pay for any subsequent inspections required by the Division or certified inspector.

If a vacant manufactured home fails the installation inspection because of conditions that endanger the health or safety of the occupant, the manufactured home cannot be occupied. The unsafe manufactured home will be visibly posted with a "Red Tag Notice" to prevent occupancy.

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If an installation or subsequent repair of an installation by an installer fails to meet the instructions or standards within the time limit allowed by the inspector, the inspector must notify the installer of the specific violation(s). All installers must correct any installation violations within thirty (30) calendar days of inspection or be subject to the issuance of a "Red Tag Notice".

An installer cannot reduce or eliminate his or her responsibility to perform an "installation" as defined pursuant to section 24-32-3302(16), C.R.S., including without limitation supporting, blocking, leveling, securing, or anchoring a manufactured home on a permanent or temporary foundation system, and connecting multiple or expandable sections of the home.

A person must be actively registered with the Division of Housing before attempting to install a manufactured home regardless of whether he or she is paid for such service, including a person who installs more than one (1) manufactured home in any twelve-month period, either owned or on real property owned by such person, unless exempted from registration requirements pursuant to section 24-32-3315(1)(b), C.R.S.

A registered installer may apply to the Division of Housing for certification under one of the two following classifications or both:

Class A – Modular Only. Submit evidence of five (5) Division-approved installations of manufactured homes built to the building codes adopted by the State Housing Board, completed within an 18-month period.

Class B – HUD homes only. Submit evidence of five (5) Division-approved installations of manufactured homes built to the "National Manufactured Housing Construction and Safety Standards Act of 1974", 42 U.S.C. sec. 5401 et seq., and any standard promulgated by the Secretary of the U.S. Department of Housing and Urban Development (HUD) pursuant to the federal act; completed within an 18-month period.

Evidence of installation must include copies of all inspection reports for each installation issued by the Division of Housing or a certified installation inspector. If in the judgment of the Division, such installer has demonstrated the ability to successfully complete installations of manufactured homes in accordance with the requirements of the specific classification he or she has applied, a certification inspection will be scheduled. Certification will be granted at that classification if the installation is approved.

If the review of the evidence of the installations does not clearly demonstrate the ability to successfully complete installations in compliance with the requirements, the Division may require additional installations to be performed, reviewed, and accepted prior to scheduling a certification inspection.

A certified installer is authorized to independently post an "installation authorization" on the installation site and to certify the installation by affixing a certificate of installation (insignia) authorized by the Division after the installation is completed in compliance with all requirements.

The certified installer must then report that he or she certified the installation to the Division.

Installations performed by a certified installer do not require an inspection by the Division or a certified inspector. However, pursuant to sections 24-32-3315(7)(b), 24-32-3317(2), and 24-3317(6), C.R.S., one of the parties identified may request the Division of Housing to inspect an installation performed by a certified installer.

A registered installer is required to timely renew his/her registration once a year.

A certified installer must timely and completely renew his or her registration with the Division of Housing as required above in Rule 6.15 in order to maintain his or

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her certification. A certification will automatically expire if a registration is not successfully renewed.

Installers and inspectors must retain proof of continuing education completion for three years, and provide said proof to the Division upon request.

The Division may authorize independent contractors to perform installation inspections and enforcement of proper installation of manufactured homes.

Where a local jurisdiction has established a building department, the building official or other approved authority may make a written request to be the exclusive independent installation inspection agency within their legal boundaries as a "participating jurisdiction."

Rule 7. Enforcement.

The rule also includes Appendix A and Appendix B with specific installation instructions.

In connection with the adoption of these rules, the following rules have been repealed:

8 Colo. Code Regs. § 1302-4 by which the Housing Board adopted as the "Manufactured Home Construction Standards and Procedural Regulations of the State of Colorado" the U.S. Department of Housing and Urban Development "Manufactured Home Construction and Safety Standards" (24 CFR Part 3280) and the U.S. Department of Housing and Urban Development "Manufactured Home Procedural and Enforcement Regulations" (24 CFR Part 3282); and

8 Colo. Code Regs. § 1302-7 by which the State Housing Board adopted the nationally recognized codes as cited in SCHEDULE "B" as the "Colorado Manufactured Housing Installation Code" that are the Division of Housing responsibility; and established standards for private inspection and certification entities to perform the Colorado Division of Housing' certification and inspection of Manufactured Housing Installations.

The rule also stated that "Manufactured Housing Installation" installers shall have the option to contract with the Colorado Division of Housing or an authorized inspection agency to perform inspection and certification functions where a local jurisdiction does not have exclusive inspection agency rights.

The repealed rule also established minimum training standards for installers and inspectors.

ADOPTED RULE

South Carolina

Installation standards

Effective 5/25/2018, this rule amends S.C. Code Ann. Regs. 79-42 relating to installation consistent with the regulations promulgated by the Department of Housing and Urban Development and sets forth the Model Manufactured Home Installation Standards, and the Manufactured Home Installation Program.

The rule deletes existing provisions and instead provides:

(A) Scope and Applicability. New manufactured homes in the State of South Carolina must be installed per the Manufacturers Installation Instructions. The Federal Manufactured Home Construction and Safety Standards Program (24 CFR 3280, 3282) require that all manufactured homes be provided with installation instructions covering foundation, anchoring, utility connections, and other items. Used homes or homes without manufacturers installation instructions, are to be installed per 24 CFR Part 3285. The Manufacturers Installation Instructions and 24 CFR Part 3285 shall preempt any existing local standard.

(B) Manufactured Home Installation. Where such installation instructions are provided, they shall be followed and supplemented by this regulation. If conditions exist at the location of the installation that are not covered by the Manufacturers Installation Manual or 24 CFR Part 3285, then an alternative design for

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installation must be drafted by a licensed South Carolina Professional Engineer or a South Carolina Registered Architect and approved by the manufacturer and its Design Approval Primary Inspection Agency (DAPIA) prior to the home being set.

LENDING

EMERGENCY RULE

California

Residential Energy Efficiency Loan Assistance Program

California has renewed its emergency rule, Cal. Code Regs. tit. 4, §§ 10091.1 to 10091.15, Residential Energy Efficiency Loan Assistance Program, on which we have previously reported.

The new effective date is 6/5/2018. The rule expires 9/5/2018.

ADOPTED RULE

Maine

Home Mortgage Program

Effective 5/9/2018, this rule adopts 99-346-1 Me. Code R. §§ 2-20.

This rule repeals and replaces in its entirety the current Home Mortgage Program Rule. The replacement rule does the following: (i) MSHA references are changed to MaineHousing; (ii) the new mortgage requirement is clarified to state that a homebuyer may not currently have a mortgage on the residence; (iii) mobile home security requirements are updated to comply with current law; (iv) the requirement for fidelity insurance on condominiums is changed from condominiums with greater than 30 units to condominiums with greater than 20 units; (v) language allowing MaineHousing to limit mortgage insurers by type of mortgage insurer is added; (vi) the section on application requirements for lenders to participate in the single family requirements is expanded; (vii) the Servicing Agreement is referenced in the section requiring indemnification from a Qualified Servicer.

LEGISLATION

Maryland

Consumer loans

2018 MD H 1297. Enacted 5/15/2018. Effective 1/1/2019.

(New material in CAPS)

This bill amends Md. Code Ann., Com. Law § 12-101 to provide that:

"LICENSEE" MEANS A PERSON THAT IS REQUIRED TO BE LICENSED TO MAKE LOANS SUBJECT TO THIS SUBTITLE (Interest and Usury), REGARDLESS OF WHETHER THE PERSON IS ACTUALLY LICENSED.

"LOAN" MEANS A LOAN OR AN ADVANCE OF MONEY OR CREDIT SUBJECT TO THIS SUBTITLE, REGARDLESS OF WHETHER THE LOAN OR ADVANCE OF MONEY OR CREDIT IS OR PURPORTS TO BE MADE UNDER THIS SUBTITLE.

(2) "LOAN" DOES NOT INCLUDE:

(I) A LOAN OR ADVANCE OF MONEY OR CREDIT SUBJECT TO SUBTITLE 3 OF THIS TITLE (Consumer Loans—Credit Provisions), UNLESS A WRITTEN ELECTION IS MADE UNDER § 12-101.1 OF THIS SUBTITLE;

(II) A PLAN OR LOAN FOR WHICH A WRITTEN ELECTION IS MADE UNDER SUBTITLE 3 (Consumer Loans—Credit Provisions), SUBTITLE 4 (Secondary Mortgage Loans—Credit Provisions), SUBTITLE 9 (Credit Grantor Revolving Credit Provisions), OR SUBTITLE 10 (Credit Grantor Closed End Credit Provisions) OF THIS TITLE; OR

(III) AN INSTALLMENT SALE AGREEMENT AS DEFINED IN § 12-601 OF THIS TITLE.

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The bill adds Md. Code Ann., Com. Law § 12-101.1 to provide:

(A) ON OR AFTER JANUARY 1, 2019, A LENDER MAY, AT THE LENDER'S OPTION, ELECT TO MAKE A LOAN TO ANY BORROWER EITHER UNDER THIS SUBTITLE OR AS OTHERWISE AUTHORIZED BY APPLICABLE LAW.

(B) IF A LENDER MAKES A WRITTEN ELECTION IN THE AGREEMENT, NOTE, OR OTHER EVIDENCE OF THE LOAN SPECIFYING THAT THIS SUBTITLE WILL GOVERN THE LOAN, SUBTITLES 3, 4, 5, 6, 9, AND 10 OF THIS TITLE DO NOT APPLY TO THE LOAN. (Subtitle 5—Retail Credit Accounts; Subtitle 6—Retail Installment Sales)

(C) IF A LENDER THAT MAKES OR CONTRACTS TO MAKE A LOAN DOES NOT MAKE A WRITTEN ELECTION UNDER THIS SUBTITLE OR SUBTITLE 3, SUBTITLE 4, SUBTITLE 9, OR SUBTITLE 10 OF THIS TITLE, THIS SUBTITLE STILL APPLIES TO THE LOAN IF THE LOAN IS:

(1) FOR AN AMOUNT OVER $25,000; OR

(2) (I) FOR AN AMOUNT OF $25,000 OR LESS; AND

(II) NOT SUBJECT TO SUBTITLE 3 OF THIS TITLE.

The bill amends Md. Code Ann., Com. Law §§ 12–111, Statute of Limitations, 12–112, Holders in Due Course, and 12–114, Remedies Available to provide that those sections do not apply to a loan subject to § 12-114.1 of this subtitle.

Md. Code Ann., Com. Law § 12-114.1 is enacted to provide:

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) (I) "COVERED LOAN" MEANS A LOAN SUBJECT TO § 12-103(A)(3) OR (C) OF THIS SUBTITLE, MADE FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES, REGARDLESS OF WHETHER THE LOAN IS OR PURPORTS TO BE MADE UNDER THIS SUBTITLE.

(II) "COVERED LOAN" DOES NOT INCLUDE A LOAN SUBJECT TO SUBTITLE 3 OF THIS TITLE:

1. A LOAN OR AN ADVANCE OF MONEY OR CREDIT SUBJECT TO SUBTITLE 3 OF THIS TITLE, UNLESS A WRITTEN ELECTION IS MADE UNDER § 12-101.1 OF THIS SUBTITLE;

2. A PLAN OR LOAN FOR WHICH A WRITTEN ELECTION HAS BEEN MADE UNDER SUBTITLE 3, SUBTITLE 4, SUBTITLE 9, OR SUBTITLE 10 OF THIS TITLE; OR

3. AN INSTALLMENT SALE AGREEMENT AS DEFINED IN § 12-601 OF THIS TITLE.

(3) "OUT - OF - STATE LENDER" MEANS A PERSON WHO MAKES A LOAN VALIDLY IN ANOTHER STATE THAT COMPLIES WITH A COMPARABLE LOAN LAW OF THE OTHER STATE.

(4) (3) "UNLICENSED PERSON" MEANS A PERSON WHO IS NOT:

(I) LICENSED IN THE STATE TO MAKE A COVERED LOAN; AND

(II) EXEMPT FROM LICENSING IN THE STATE.

(B) THIS SECTION APPLIES TO A COVERED LOAN MADE BY A PERSON DOMICILED IN ANOTHER STATE TO A BORROWER WHO IS A RESIDENT OF THE STATE IF THE APPLICATION FOR THE LOAN ORIGINATED IN THE STATE TO ANY PERSON.

(C) (1) AN UNLICENSED PERSON MAY NOT MAKE A COVERED LOAN.

(2) A PERSON MAY NOT MAKE A COVERED LOAN IF THE PERSON DIRECTLY OR INDIRECTLY CONTRACTS FOR, CHARGES, OR RECEIVES A RATE OF INTEREST, CHARGE, DISCOUNT, OR OTHER CONSIDERATION THAT IS GREATER THAN THE AMOUNT AUTHORIZED UNDER STATE LAW.

(3) A PERSON MAY NOT MAKE A COVERED LOAN THAT VIOLATES THE FEDERAL MILITARY LENDING ACT.

(D) (1) EXCEPT AS PROVIDED IN PARAGRAPH (6) OF THIS SUBSECTION, A, A COVERED LOAN MADE BY AN UNLICENSED PERSON IS VOID AND UNENFORCEABLE.

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(2) (I) EXCEPT AS PROVIDED IN PARAGRAPH (6) OF THIS SUBSECTION AND SUBPARAGRAPH (II) OF THIS PARAGRAPH, A COVERED LOAN IS VOID AND UNENFORCEABLE IF A PERSON CONTRACTS FOR A COVERED LOAN THAT HAS A RATE OF INTEREST, CHARGE, DISCOUNT, OR OTHER CONSIDERATION GREATER THAN THE AMOUNT AUTHORIZED UNDER STATE LAW.

(II) A COVERED LOAN IS NOT VOID AND UNENFORCEABLE IF:

1. A CLERICAL ERROR OR MISTAKE RESULTED IN THE RATE OF INTEREST, CHARGE, DISCOUNT, OR OTHER CONSIDERATION BEING GREATER THAN THE AMOUNT AUTHORIZED UNDER STATE LAW; AND

2. A PERSON CORRECTS THE ERROR OR MISTAKE BEFORE ANY PAYMENT IS RECEIVED THE FIRST PAYMENT IS DUE UNDER THE LOAN.

(3) A COVERED LOAN THAT VIOLATES THE FEDERAL MILITARY LENDING ACT IS VOID AND UNENFORCEABLE.

(4) A PERSON MAY NOT RECEIVE OR RETAIN ANY PRINCIPAL, INTEREST, FEES, OR OTHER COMPENSATION WITH RESPECT TO ANY LOAN THAT IS VOID AND UNENFORCEABLE UNDER THIS SECTION.

(5) A PERSON MAY NOT SELL, ASSIGN, OR OTHERWISE TRANSFER A LOAN THAT IS VOID AND UNENFORCEABLE UNDER THIS SECTION.

(6) (I) IF AN OUT - OF - STATE LENDER MAKES A COVERED LOAN, THE COVERED LOAN IS NOT VOID AND UNENFORCEABLE.

(II) AN OUT - OF - STATE LENDER MAY NOT COLLECT A RATE OF INTEREST, CHARGE, DISCOUNT, OR OTHER CONSIDERATION THAT IS GREATER THAN THE AMOUNT AUTHORIZED UNDER STATE LAW.

(4) WITH RESPECT TO A LOAN THAT IS VOID AND UNENFORCEABLE UNDER THIS SECTION, A PERSON MAY NOT:

(I) COLLECT OR ATTEMPT TO COLLECT, DIRECTLY OR INDIRECTLY, ANY AMOUNT FROM THE BORROWER;

(II) ENFORCE OR ATTEMPT TO ENFORCE THE CONTRACT AGAINST ANY PROPERTY SECURING THE LOAN; OR

(III) SELL, ASSIGN, OR OTHERWISE TRANSFER THE LOAN TO ANOTHER PERSON.

The bill amends Md. Code Ann., Com. Law § 12-301 to provide that "LOAN" DOES NOT INCLUDE AN INSTALLMENT SALE AGREEMENT AS DEFINED IN § 12-601 OF THIS TITLE.

Md. Code Ann., Com. Law § 12-303 has been amended to add that:

(A) (1) THIS SUBTITLE APPLIES TO A LOAN OF $25,000 OR LESS MADE FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES.

(2) EXCEPT AS PROVIDED IN PARAGRAPH (2) (3) OF THIS SUBSECTION, THIS SUBTITLE APPLIES REGARDLESS OF:

(I) WHETHER THE TRANSACTION IS OR PURPORTS TO BE MADE UNDER THIS SUBTITLE;

(II) WHETHER THE TRANSACTION IS OR PURPORTS TO BE AN INSTALLMENT LOAN;

(III) THE DURATION OF THE REPAYMENT PERIOD;

(IV) WHETHER THE TRANSACTION IS OR PURPORTS TO BE NONRECOURSE OR CONTINGENT; AND

(V) WHETHER THE TRANSACTION PURPORTS TO BE THE PURCHASE OF WAGES, PENSIONS, GOVERNMENTAL BENEFITS, OR OTHER SIMILAR FUTURE PAYMENT STREAMS.

(3) THIS SUBTITLE DOES NOT APPLY TO:

(I) A PLAN OR LOAN FOR WHICH A WRITTEN ELECTION HAS BEEN MADE UNDER SUBTITLE 1, SUBTITLE 4, SUBTITLE 9, OR SUBTITLE 10 OF THIS TITLE;

(II) A LOAN MADE BY AN INDIVIDUAL PROVIDED THE INDIVIDUAL:

1. DOES NOT MAKE MORE THAN THREE LOANS IN A CALENDAR YEAR; AND

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2. DOES NOT ENGAGE IN THE BUSINESS OF MAKING LOANS; OR

(III) A LOAN BETWEEN AN EMPLOYER AND AN EMPLOYEE.

The bill provides that a lender may not make a loan SUBJECT TO this subtitle unless the loan is in an original amount or value which does not exceed $25,000 (formerly, $6,000).

The bill amends Md. Code Ann., Com. Law § 12-311 to provide that:

(c) (1) A lender may not take any security interest in:

(i) Real property for any loan under $4,000 (formerly, $2,000) in value or amount; or

(ii) Personal property for any loan under $1,400 (formerly, $700) in value or amount.

Md. Code Ann., Com. Law § 12-313, Proscribed Conduct; Remedies Available has been deleted.

The bill amends Md. Code Ann., Com. Law § 12-314 to provide that:

(a) A person may not lend $25,000 (formerly, $6,000) or less if:

(1) THE person directly or indirectly contracts for, charges, or receives a greater rate of interest, charge, discount, or other consideration than that authorized by the laws of this State;

(2) THE TRANSACTION VIOLATES THE FEDERAL MILITARY LENDING ACT; OR

(3) THE PERSON IS NOT LICENSED UNDER OR EXEMPT FROM THE LICENSING REQUIREMENTS UNDER THE MARYLAND CONSUMER LOAN LAW - LICENSING PROVISIONS.

(b) (1) (I) A loan made in the amount of $25,000 (formerly, $6,000) or less, REGARDLESS OF whether the loan is or purports to be made under this subtitle, is VOID AND unenforceable if:

1. EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, A PERSON CONTRACTS FOR A LOAN THAT HAS A rate of interest, charge, discount, or other consideration greater than that authorized UNDER STATE LAW;

2. THE LOAN VIOLATES THE FEDERAL MILITARY LENDING ACT; OR

3. A PERSON WHO IS NOT LICENSED UNDER OR EXEMPT FROM THE LICENSING REQUIREMENTS UNDER TITLE 11, SUBTITLE 2 OF THE FINANCIAL INSTITUTIONS ARTICLE MADE THE LOAN.

(II) A LOAN IS NOT VOID AND UNENFORCEABLE IF:

1. A clerical error or mistake RESULTED IN THE RATE OF INTEREST, CHARGE, DISCOUNT, OR OTHER CONSIDERATION BEING GREATER THAN THE AMOUNT AUTHORIZED UNDER STATE LAW; and the

2. A person corrects the error or mistake before THE FIRST PAYMENT IS DUE UNDER THE LOAN (formerly, before any payment is received under the loan).

(2) A person (deleting, who is neither a licensee nor exempt from licensing) may not receive or retain any principal, interest, FEES (adding, fees), or other compensation with respect to any loan that is VOID AND unenforceable (adding, void and) under this subsection.

(3) This subsection does not apply to a person who is exempt (formerly, a licensee or who is exempt) from licensing under this subtitle.

(c) (1) This section does not apply to a loan transaction validly made in another state in compliance with a similar loan law of that state.

(2) A lender may not collect an amount that is more than the total amount that would be permitted if this subtitle were applicable.

(3) This section applies to all loans made by a lender domiciled in another state to a borrower who is a resident of this State if the application for the loan originated in this State.

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(D) WITH RESPECT TO A LOAN THAT IS VOID AND UNENFORCEABLE UNDER THIS SECTION, A PERSON MAY NOT:

(1) COLLECT OR ATTEMPT TO COLLECT, DIRECTLY OR INDIRECTLY, ANY AMOUNT FROM THE BORROWER;

(2) ENFORCE OR ATTEMPT TO ENFORCE THE CONTRACT AGAINST ANY PROPERTY SECURING THE LOAN; OR

(3) SELL, ASSIGN, OR OTHERWISE TRANSFER THE LOAN TO ANOTHER PERSON.

The bill amends Md. Code Ann., Com. Law § 12-401 to provide that "Licensee" means a person who is REQUIRED TO BE licensed under the Maryland Mortgage Lender Law , REGARDLESS OF WHETHER THE PERSON IS ACTUALLY LICENSED.

The bill adds Md. Code Ann., Com. Law § 12-402.1 to provide that:

(A) (1) ON OR AFTER JANUARY 1, 2019, A LENDER MAY, AT THE LENDER'S OPTION, ELECT TO MAKE A LOAN TO ANY BORROWER EITHER UNDER THIS SUBTITLE OR AS OTHERWISE AUTHORIZED BY APPLICABLE LAW.

(2) IN ORDER TO MAKE A LOAN UNDER THIS SUBTITLE, A LENDER SHALL MAKE A WRITTEN ELECTION IN THE AGREEMENT, NOTE, OR OTHER EVIDENCE OF THE LOAN SPECIFYING THAT THIS SUBTITLE WILL GOVERN THE LOAN.

(B) (1) IF A LENDER ELECTS TO MAKE A LOAN UNDER THIS SUBTITLE IN ACCORDANCE WITH THIS SECTION, SUBTITLES 1, 3, 9, AND 10 OF THIS TITLE DO NOT APPLY TO THE LOAN.

(2) IF A LENDER WHO MAKES OR CONTRACTS TO MAKE A LOAN DOES NOT MAKE A WRITTEN ELECTION UNDER THIS SUBTITLE OR SUBTITLE 1, SUBTITLE 3, SUBTITLE 9, OR SUBTITLE 10 OF THIS TITLE:

(I) SUBTITLE 1 OF THIS TITLE WILL APPLY TO THE LOAN IF THE LOAN IS:

1. FOR AN AMOUNT OVER $25,000; OR

2. A. FOR AN AMOUNT OF $25,000 OR LESS; AND

B. NOT SUBJECT TO SUBTITLE 3 OF THIS TITLE; OR

(II) SUBTITLE 3 OF THIS TITLE WILL APPLY TO THE LOAN IF THE LOAN IS:

1. FOR AN AMOUNT OF $25,000 OR LESS; AND

2. SUBJECT TO SUBTITLE 3 OF THIS TITLE.

The bill amends Md. Code Ann., Com. Law § 12-601 to provide that "Goods" means all tangible personal property that has a cash price of $100,000 (formerly, $25,000) or less.

LEGISLATION

Maryland

Consumer protection

2018 MD H 1634 and 2018 MD S 1068. Enacted 5/15/2018. Effective 10/1/2018.

(New material in CAPS)

This bill amends Md. Code Ann., Com. Law §§ 13-101, 13-301 and 13-303 to alter the definition of "unfair or deceptive trade practice" to be "unfair, abusive, or deceptive trade practice."

The bill provides that unfair, abusive, or deceptive trade practices include violations of the federal Military Lending Act or the federal Servicemembers Civil Relief Act.

The bill amends Md. Code Ann., Com. Law § 14-202 to provide that, in collecting or attempting to collect an alleged debt a collector may not:

(10) ENGAGE IN UNLICENSED DEBT COLLECTION ACTIVITY IN VIOLATION OF THE MARYLAND COLLECTION AGENCY LICENSING ACT; OR

(11) ENGAGE IN ANY CONDUCT THAT VIOLATES §§ 804 THROUGH 812 OF THE FEDERAL FAIR DEBT COLLECTION PRACTICES ACT.

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The bill adds to Md. Code Ann., Com. Law, SUBTITLE 41. FINANCIAL CONSUMER PROTECTION, §§ 14-4101 - 14-4104, TO SUPPORT VIGOROUS ENFORCEMENT BY AND FUNDING OF THE OFFICE (OF THE ATTORNEY GENERAL) AND THE COMMISSIONER (OF FINANCIAL REGULATION IN THE DEPARTMENT OF LABOR, LICENSING, AND REGULATION) TO PROTECT THE STATE'S RESIDENTS WHEN CONDUCTING FINANCIAL TRANSACTIONS AND RECEIVING FINANCIAL SERVICES.

The bill provides that WHENEVER THE OFFICE AND THE COMMISSIONER CONSIDER IT APPROPRIATE, THE OFFICE AND THE COMMISSIONER SHALL USE THEIR AUTHORITY UNDER § 1042 OF THE DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT OF 2010 TO BRING CIVIL ACTIONS OR OTHER APPROPRIATE PROCEEDINGS AUTHORIZED UNDER THE ACT.

Md. Code Ann., Fin. Inst. §§ 2–115, Cease and Desist Orders, and 2–116, Temporary Restraining Orders, Injunctions, and Other Remedies, have been amended to provide for civil penalties NOT EXCEEDING:

(I) $10,000 for a first violation ; and

(II) $25,000 for each subsequent violation;

Formerly, up to the maximum amount of $1,000 for a first violation and a maximum amount of $5,000 for each subsequent violation

The bill amends Md. Code Ann., Fin. Inst. § 11–517, Suspension or Revocation of License, relating to Mortgage Lenders, to provide that the Commissioner, to enforce the provisions of this subtitle, regulations adopted under § 11-503 of this subtitle, and the applicable provisions of Title 12 of the Commercial Law Article, may impose a civil penalty not exceeding $10,000 (formerly, $5,000) for each violation.

If a violator fails to comply with an order issued under paragraph (1)(i) of this subsection, the Commissioner may impose a civil penalty not exceeding $25,000 (formerly, $5,000) for each violation from which the violator failed to cease and desist or for which the violator failed to take affirmative action to correct.

The bill makes similar amendments to Md. Code Ann., Fin. Inst. §§ 11-615 (MLOs), 12-126 (Check Cashing Services), 12-426 (Money Transmitters) and 12-928 (Debt Management Services).

The bill also provides that the Maryland Financial Consumer Protection Commission shall study the possible exemption of retailers of manufactured homes from the definition of "mortgage originator" in federal law and include recommendations regarding clarification of State law to ensure that Maryland buyers of manufactured homes are protected in their home-buying transaction

LICENSING

ADOPTED RULE

Arizona

Retailers - Installers

Effective 6/30/2018, this rule amends the rules of the Board of Manufactured Housing, Ariz. Admin. Code §§ R4-34-101 thru -104, -201 thru -204, -301 thru -303, -401 and -402, -501 thru -506, -601, -603 thru -607, -701 thru -707, -801 thru -805, -1001.

A summary of this rule is provided under INSTALLATION, above.

LEGISLATION

Georgia

Mortgage servicers

2017 GA H 780. Enacted 5/3/2018. Effective immediately.

This bill amends Ga. Code Ann. § 7-1-1000, relating to definitions relative to mortgage lenders and mortgage

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brokers, by deleting "for another" in paragraph (32) as follows:

"(32) 'Service a mortgage loan' means the collection or remittance or the right to collect or remit payments of principal, interest, trust items such as insurance and taxes, and any other payments pursuant to a mortgage loan."

Formerly, this paragraph read:

(32) 'Service a mortgage loan' means the collection or remittance for another or the right to collect or remit for another of payments of principal, interest, trust items such as insurance and taxes, and any other payments pursuant to a mortgage loan.

The bill amends Ga. Code Ann. § 7-1-1009 to provide that the commissioner or an examiner specifically designated may disclose such limited information as is necessary to conduct a civil or administrative investigation or proceeding. Information contained in the records of the department which is not confidential and may be made available to the public either on the department's website, or upon receipt by the department of a written request, or in the Nation-wide Multistate Licensing System and Registry (adding the NMLSR) shall include:

(1) For mortgage brokers and mortgage lenders, the name, business address, and telephone, facsimile, and license numbers of a licensee or registrant;

(2) For mortgage brokers and mortgage lenders, the names and titles of the principal officers;

(3) For mortgage brokers and mortgage lenders, the name of the owner or owners thereof;

(4) For mortgage brokers and mortgage lenders, the business address of a licensee's or registrant's agent for service; and

(5) The terms of or a copy of any bond filed by a licensee or registrant.

ADOPTED RULE
Mississippi
Dealers

Effective 7/1/2018, this rule amends Miss. Admin. Code 35-IV-1.03 to provide:

104 Any manufactured home dealer (formerly, any manufactured home dealer who was issued a permit to engage in business prior to July 1, 2001 and) who files delinquent tax returns for more than one period in a calendar year or who presents a check for payment of tax that is returned by the bank for insufficient funds, shall be required to post a bond equal to six months' tax liability. The six months' liability shall be determined by accumulating the past 12 months' liability (determined by returns filed or audit results) and dividing by 2.

ADOPTED RULE
South Carolina
Continuing education

Effective 5/25/2018, this rule amends S.C. Code Ann. Regs. 79-6 of the South Carolina Manufactured Housing Board to require continuing education prior to renewal of licenses.

SALES AND WARRANTIES

LEGISLATION
Colorado
Sales tax

2018 CO H 1315. Enacted 5/24/2018. Effective 8/8/2018.

This bill amends Colo. Rev. Stat. § 39-26-721(3) to provide that, beginning July 1, 2019, the sale, storage, usage, or consumption of a manufactured home, as

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defined in section 39-1-102 (7.8), is exempt from taxation under Parts 1 (Sales Tax) and 2 (Use Tax) of this Article 26.

LEGISLATION
Georgia
Sales tax

2017 GA H 871. Enacted 5/7 /2018. Effective 7/1/2018.

This bill amends Ga. Code Ann. § 48-8-3, relating to exemptions from state sales and use taxes, to create an exemption from state sales and use tax for 50 percent of the sales price of manufactured homes to be converted into real property in the state.

Within 30 days of a sale exempted as provided, the seller shall complete the requirements of Code Section 8-2-183.1 and properly file a copy of the Certificate of Permanent Location with the clerk of superior court, or the commissioner shall recover from the seller 1.5 times the amount of tax exempted by this paragraph.

A manufactured home that is exempted shall not be eligible for a Certificate of Removal from Permanent Location provided in Part 4 of Article 2 of Chapter 2 of Title 8, or any other manner of a return to tangible personal property unless the amount exempted is paid to the commissioner.

The exemption shall not apply to any sales and use tax levied or imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to:

(i) Constitutional amendment;

(ii) Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the 'Metropolitan Atlanta Rapid Transit Authority Act of 1965'; or

(iii) Article 2, 2A, 3, 4, 5, or 5A of this chapter.

LEGISLATION
Maryland
Lease option to purchase

2018 MD H 1257. Enacted 5/15/2018. Effective 7/1/2018.

This bill amends Md. Code Ann., § 8-202 to provide that a lease option agreement to purchase improved residential property, with or without a ground rent:

(I) IF executed after July 1, 1971, shall contain the following statement in capital letters: "THIS IS NOT A CONTRACT TO BUY."; and

(new) (II) if executed on or after July 1, 2018, shall also contain the following statement in capital letters and in close proximity to the tenant's signature line:

"This agreement is an integral part of your lease and is governed by title 8 of the real property article of the annotated code of Maryland and a tenant or prospective tenant shall have all applicable rights and remedies provided under that title."

REGULATOR BULLETIN
Minnesota
Regulated loan amounts

Dollar amounts indexed in the Regulated Loan Act, Minnesota Statutes, Chapter 56, and the Minnesota Consumer Credit Code, Minnesota Statutes, Section 47.59, will increase effective July 1, 2018.

Note: The Consumer Loan Act will not apply to all manufactured housing lenders due to Minn. Stat. § 47.204's rate authority.

	Original	7/1/2018
Chapter 47		
Principal Subject to 33% Interest	$750	$1,238
Minimum Refund	$5.00	$8.25

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Default Charges	$5.20	$8.58
Loan Administration Fee	$4,320	$7,128
Chapter 56		
Assumption Fee	$240	$396
Minimum Real Estate Secured Loan	$4,320	$7,128
Maximum Closing Costs on Real Estate Secured Loan	$400	$660
Minimum New Fund Advance for Discount Points and Appraisal Fees	$1,000	$1,650
Minimum Real Estate Secured Loan for Discount Points	$12,000	$19,800

TAXATION

ADOPTED RULE

Idaho

Property tax – Park models

Effective 3/28/2018, this rule amends Idaho Admin. Code r. 35.01.03 - Property Tax Administrative Rules.

612. PROPERTY EXEMPT FROM TAXATION -- MOTOR VEHICLES, RECREATIONAL VEHICLES, AND VESSELS PROPERLY REGISTERED (RULE 612).

06. Recreational Vehicles. The owner of a recreational vehicle, as defined in Section 49-119(6), Idaho Code, must pay a recreational vehicle annual license fee as authorized by Section 49-445, Idaho Code, and as computed in accordance with Rule 020 of these rules in order to be exempt under Section 63-602J, Idaho Code.

a. Recreational vehicles that qualify for licensing and registration and have paid the required registration fee by August 31 each year (formerly, by August 31, 2017) are eligible for the exemption provided in Section 63-602J, Idaho Code. The owners of recreational vehicles that do not qualify or have not paid the fee must be sent a valuation assessment notice for the recreational vehicle after the August 31 deadline (formerly, The owners of recreational vehicles that do not qualify or have not paid the fee must be sent a valuation assessment notice and any taxable property not included on the property roll is to be included on the subsequent or missed property roll). The assessment of the recreational vehicle is subject to cancellation as provided in Rule 020, provided any applicable registration fee is paid before the fourth Monday of November (formerly, the 4th Monday of November, 2017).

b. The provisions of Paragraph 612.06.a. of this rule apply to a park model recreational vehicle unless it is determined by the assessor to:

(formerly, Park model recreational vehicles qualify for the exemption provided in Section 63-602J, Idaho Code, and are therefore not subject to property tax, if they are licensed and registered. Such vehicles cannot be licensed and registered if they are determined by the assessor to:)

i. Be permanently attached to a foundation; or

ii. Have an attached building addition; or

iii. Have been substantially modified and no longer meet the definition of a park model recreational vehicle.

TITLING AND PERFECTION

LEGISLATION

Arizona

Certificate of title – Refusal/revocation

2018 AZ S 1200. Enacted 4/23/2018. Effective 8/3/2018.

This bill amends Ariz. Rev. Stat. Ann. § 28-2059, Obtaining a certificate of title; refusal; revocation, to provide that the director shall serve a notice of refusal to issue a certificate of title or vehicle registration or a notice of revocation of a certificate of title or registration in person or by first class mail. Within fifteen days after the date the notice is mailed or served (formerly, delivered or mailed), a person who is aggrieved by the refusal or revocation (formerly, the applicant) may

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request a hearing (thereby including lienholders and other third parties).

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ABOUT THE EDITORS

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