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!

We hope that the legal and regulatory landscape governing the manufactured housing industry is not preventing you from enjoying your summer. That said, this update should make for a great beach or poolside read.

This month's update includes some interesting cases in the community space, including a case involving oral leases dating back to the 1970s and a case involving the conversion of a land-lease community to an all rental community.

If the TCPA interests you, take a look at the Third Circuit decision defining the meaning of an autodialer.

With respect to Duty to Serve, note that the FHFA posted snapshots of the Duty to Serve Plans.

These are only a few items of interest this month. So, read on‼

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COMMUNITIES

CASE LAW

Change in use - Notice

CASE NAME: *Delaware Manufactured Home Owners Association v. Investors Realty, Inc.*
DATE: *05/31/2018*
CITATION: *Supreme Court of Delaware. Slip Copy (Table, Text in WESTLAW), Unpublished Disposition. 2018 WL 2446805*

St. Jones Landing, LLC was the owner of a "land lease only" community in which the tenant owned the manufactured home but paid rent to St. Jones for the lot on which the home was placed. K–4 Management was the property management company.

K–4 sent notice letters to the tenants advising them that their land lease agreements with St. Jones were being terminated. Sent along with the notice was a Relocation Plan. K–4 sent a copy of the notice and the Relocation Plan to the Delaware Manufactured Home Relocation Authority ("the Authority").

The lots were being changed from a land lease only arrangement to a full rental arrangement under which St. Jones would own the dwelling unit and the lot–both of which would be rented to a tenant. The notice informed tenants that St. Jones was changing from a manufactured home park to an "apartment style lease project."

Appellants filed a Verified Complaint, Motion for Expedited Proceedings, and Motion for Preliminary Injunction against Appellees. The injunction request sought to stop the eviction of the tenants, stop all relocation payments from the Authority, and stop St. Jones from doing any new construction to replace the current manufactured homes with new ones. Appellants sought penalties for Appellees alleged violations of the Manufactured Home Owners and Community Owners Act ("Act").

The Court of Chancery found: the intended change of the use of the land was a permissible basis for terminating the tenants' leases under the Act; the notice complied with the Act; Appellants failed to demonstrate irreparable harm; the Association lacked organizational standing; and the injunctive claims were moot as all tenants had moved or were in the process of voluntarily moving from St. Jones. Appellants appealed.

The appeals court found that the phrase, "change in use of the land" is not defined in the Act, but agreed with the trial court that a change from owner occupied manufactured homes on rented lots to landlord ownership of both the lot and the dwelling unit resulted in a materially different use of the land, a conclusion supported by the fact that the legal relationship between St. Jones and the residents would no longer be governed by the Act, but by the Residential Landlord–Tenant Code.

The Court also found that informing the tenants that the intended use was an apartment style lease project satisfied the notice requirement of the Act. The Appellants' contention that the statute requires a more detailed statement was rejected.

Affirmed.

CASE LAW

Sale of home - Title

CASE NAME: *Pasternac v. Harris*
DATE: *05/31/2018*
CITATION: *Court of Appeals of Indiana. Slip Copy (Table, Text in WESTLAW), Unpublished Disposition. 2018 WL 2437351*

Harris bought a mobile home at Green Acres Manufactured Housing Community so that his girlfriend, Sandra Clement, could live there. Harris received the original certificate of title.

Clement signed a lease with Green Acres. The Rental Agreement included a right of first refusal.

Pasternac, owner and President of Rainbow Community, Inc., approached Clements about buying the Mobile Home. Clements possessed the Certificate of Title for the home, which carried Harris's printed name and signature and the title "owner" crossed out with the title "seller" written above it. The boxes for "Date of sale" and "Selling price" remained blank.

Clements sold the Mobile Home to Rainbow Community. The Contract noted "title owner reads Robert A. Harris[.] Actual owner and legal seller is Sandra L. Clements." Clements and Rainbow Community also executed a handwritten "Bill of Sale," which provided that the agreement was between "Robert A. Harris ... Actual owner/seller an[d] in possession of title Sandra L. Clements." Clements signed the Certificate of Title and gave it to Pasternac. She did not notify Harris, and she did not notify Green Acres so that Green Acres could exercise its right of first refusal. The Bureau of Motor Vehicles ("BMV") issued a title to the Mobile Home in Rainbow Community's name.

Green Acres became aware of Clements' sale of the Home and blocked the removal of the Home by Pasternac. Harris and Green Acres filed a complaint requesting damages and a permanent injunction preventing Pasternac and Rainbow Community from removing the Mobile Home and allowing Green Acres to exercise its right of first refusal. Harris and Green Acres also filed a petition for a temporary restraining order preventing Pasternac and Rainbow Community from moving or attempting to remove any part of the Mobile Home until the case could be resolved.

Harris testified that he had signed the Certificate of Title because he had wanted Clements to be able to have the Mobile Home if he died. He also said that he had "absolutely not" intended his signature to create "a transfer" and that he had not authorized Clements to sign the title herself or to transfer it to anyone else. Pasternac testified and acknowledged that he had known about Green Acres' right of first refusal but left it up to Clements to inform Green Acres because "the contract [was] between [Green Acres] and her."

The trial court ordered the title for the Mobile Home to be restored to Clements, "whereupon Green Acres may exercise its Right of First Refusal." The trial court entered a "Preliminary Injunction against the Defendants," although it reserved the determination of damages. Pasternac and Rainbow Community appealed, and Harris and Green Acres cross-appealed.

The appeals court found that the trial court failed to make specific findings of fact and conclusions of law as required. This impeded the Court's ability to complete its task as a reviewing court. Accordingly, the Court concluded that the trial court abused its discretion in granting the preliminary injunction.

Reversed and remanded with instructions to enter a new order including findings of fact and conclusions of law.

CASE LAW

Verbal lease - Eviction

CASE NAME: *Milby v. Pote*
DATE: *06/07/2018*
CITATION: *Superior Court of Pennsylvania. --- A.3d --- - . 2018 WL 2728894*

Milby and his wife lived in a manufactured home in the Shaw Mobile Home Park since the early 1970s. When they first moved there, the leases for all of the lots were verbal. According to Milby, the terms of the verbal lease included $35 per month in rent with no termination or expiration date. The Park was never divided formally into lots. There were no specific written rules or regulations for the Park.

In or around 2006, SCM began to lease lots in the Park. SCM, was a not-for-profit Christian trust. Mr. Milby was the sole trustee of SCM.

SCM eventually acquired verbal leases for eight lots, placing mobile homes on seven of them. At some point, SCM took over leasing the Milbys' personal lot. Lot 15 was used for storage.

In 2013 and 2014, the Park Owners filed three ejectment actions against SCM. The trial court ejected SCM from lot 9 for failing to obtain permission to place a home on the lot, and for violations of the local building code.

The trial court also concluded that the Park violated the Manufactured Home Community Rights Act ("MHCRA") by failing to have written leases. The trial court entered a decision in favor of SCM on the ejectment actions.

The Park Owners advised SCM that the Park Owners would be sending out new written leases and would set corner markings to identify the dimensions of each lot.

SCM advised that it would be paying rent only in the amount agreed to in the original verbal leases. SCM also sent a Notice to Cease Criminal Acts and Notice of Needed Repairs to the Park Owners.

The Park Owners sent SCM 60 days' formal notice of the community owner's intent to offer the new, renewed or extended leases or increase rent and/or payables. The notice further advised the lessee had 30 days to either accept the new, renewed or extended rental agreement or to notify the Landlord/Owner of the intent to vacate within 30 days. The written leases, which SCM allegedly had requested since 2008, were forwarded with this letter.

Milby, as trustee for SCM, refused to sign the new written leases and filed suit, alleging that dangerous and unacceptable conditions existed in the Park, and that the Park Owners impermissibly modified the existing lease terms in contravention of the MHCRA. The complaint also alleged that the Park Owners engaged in retaliatory conduct.

The Park Owners filed an ejectment action to remove SCM from all of its lots.

The Magisterial District Judge found in favor of the Park Owners. SCM appealed to the trial court, where the actions were consolidated.

The trial court granted the Park Owners ejectment/eviction of SCM and entered judgment against SCM for unpaid rent and unpaid sewerage costs on lot 15. SCM remained liable for the new rental amount until the manufactured homes were removed. The civil action filed by Milby and SCM was dismissed. Milby and SCM appealed.

The appeals court found that Milby, in his individual capacity, did not rent a manufactured home space directly from the Park; only SCM did. He, therefore, was not a "lessee" under the MHCRA and not have standing to raise any claims pursuant to the MHCRA.

However, the Court reversed the trial court's decision regarding SCM's lack of standing.

The Court found that the trial court's determination that SCM should not be ejected in the 2013 or 2014 actions did not preclude a new set of circumstances from giving rise to a subsequent ejectment action.

In addition, although the prior, verbal leases between the Park Owners and SCM were not in writing as required by the MHCRA, the trial court's interpretation that the leases were month to month was consistent with Section 4.1 of the MHCRA and the Park Owners' testimony.

The trial court additionally relied upon the long-standing common law principle that a verbal lease, which does not establish a fixed term but provides for monthly rent, creates a month-to-month tenancy.

The Court also found that the trial court correctly concluded that SCM's own actions in failing to sign the new leases and failing to pay the rent due gave the Park Owners non-retaliatory reasons to file their ejectment action.

The Court concluded that the Park Owners prepared written leases to comply with the MHCRA and in response to its opinion that they had "technically" violated the MHCRA for not having them. Although SCM claimed terms in the leases were retaliatory, the court observed that the Park Owners prepared the same leases for all of its lessees, and all other lessees executed them, except for SCM.

Under the MHCRA, an owner is entitled to seek rental increases once per year in any amount. SCM presented no evidence that there had been another rent increase within a year preceding this increase. Additionally, the Park Owners gave proper notice of the proposed rent increase, and waited the required sixty days before the increase became effective.

Section 398.4 of the MHCRA specifically allows a manufactured home park owner to establish rules at any time. Moreover, the Park Owners included the new rules with the proposed leases and posted them, giving proper notice. The fact that the rules differed from before was of no consequence. The Court found that the terms and conditions were fairly consistent with those of modern day leases.

SCM claimed that because the proposed leases gave the lessee only thirty days to sign them or move, they were retaliatory in nature. However, this time frame is exactly what Section 398.13 of the MHCRA requires.

And, contrary to being retaliatory toward SCM, the proposed leases actually provided greater rights to SCM than other tenants. The proposed leases for all other tenants of the Park expressly prohibited subleasing. The Park Owners, however, granted an exception to SCM and allowed it to continue subleasing the lots in dispute to the residents living in the SCM manufactured homes.

Finally, the trial court properly interpreted SCM's refusal to sign as a rejection of the leases (i.e. a decision that they no longer wanted to reside there), giving the Park Owners grounds for ejectment. The failure to pay rent and comply with the rules of the Park were grounds for eviction and served as grounds for possession and/or ejectment under section 398.3 of the MHCRA and section 250.501 of the Landlord Tenant Act.

Affirmed.

CASE LAW

Eviction – Bad faith

CASE NAME: *Del Ray Properties, Inc. v. Elliot*
DATE: *06/12/2018*
CITATION: *Court of Appeals of Washington, Division 2. Not Reported in P.3d. 2018 WL 2947939*

Elliot occupied a mobile home placed on a space in Del Ray's mobile home park. After a dispute arose over unpaid rent, Del Ray filed an unlawful detainer action to evict Elliott.

The superior court awarded Del Ray all unpaid rent and late fees owed by Elliott and Del Ray filed a motion to amend the order to include a specific amount of unpaid rent owed. Elliott responded that Del Ray had obtained the writ through fraud and that it had knowingly overstated the amount of unpaid rent due.

Following a bench trial, the superior court entered a ruling in favor of Elliot (March 22 ruling). The superior court stated that, at the time summary judgment was granted, it appeared that there was no past due rent and that the summary judgment was granted without factual basis.

The trial court found that an eviction likely should not have been granted, and that Del Ray acted in bad faith. Restoration of the tenancy to Elliott was procedurally foreclosed, and would be a poor resolution. Del Ray remained in possession of Elliott's mobile home. Elliott lost the use and enjoyment of her property for approximately 10 months. The court requested

documentation of any rental expense incurred by Elliott that would be in excess of Del Ray's rental charge.

Del Ray filed a "Response to Defendant's Proposed Judgment," and the superior court issued a written supplemental ruling that substantially changed portions of the March 22 ruling.

After determining the correct amount of unpaid rent, storage fees, and late fees due by Elliott, the superior court granted judgment in favor of Del Ray. The court ordered that Elliott retain ownership of the mobile home, and because both parties prevailed on some of their claims, the court ordered that all parties were required to pay their own attorney fees and costs. The superior court made a specific finding of fact that the "landlord did not act in good faith." Elliott appealed.

The appeals court first found that, because the superior court's March 22 letter ruling was not reduced to written findings of fact, conclusions of law, and a final judgment, the superior court did not err by later modifying its ruling.

The Court also found that the failure to act in good faith bars only the exercise of a right or remedy that requires performance of a condition precedent based on specific statutory provisions for a particular claim. Because Elliott failed to identify a condition precedent to the collection of unpaid rent which Del Ray was required to perform in good faith, the superior court was not barred from entering judgment in Del Ray's favor for unpaid rent owed by Elliott. And to the extent that Del Ray acted in bad faith in attempting to collect amounts of unpaid rent that were not actually due, the superior court did not allow Del Ray to collect those amounts. Therefore, the superior court did not err by granting judgment in favor of Del Ray for the amount of unpaid rent actually owed despite its finding that Del Ray did not act in good faith.

Finally, based on the superior court's final written findings of fact and conclusions of law, neither Elliott nor Del Ray was the prevailing party at trial because both parties prevailed to some extent. And on appeal, Del Ray was the prevailing party. Therefore, despite the fact that Del Ray did not challenge the superior court's finding that it acted in bad faith, Del Ray was entitled to an award of reasonable attorney fees on appeal.

Affirmed.

LEGISLATION

Colorado

Removal

2018 CO S 15. Enacted 6/6/2018. Effective 7/1/2018.

This bill adds Colo. Rev. Stat. § 13-40.1-101, Removal of unauthorized persons – definitions, to provide that the owner of a residential premises may initiate the investigation of and request the removal of an unauthorized person from the residential premises by filing with the county court a complaint and a verified motion for a temporary mandatory injunction restoring possession of the residential property to the owner or lawful occupant. To the extent known, the verified motion must identify the unauthorized person and include statements substantially as provided in the statute.

The bill also adds Colo. Rev. Stat. § 13-40.1-102, Unauthorized alteration or damage of a residential property, to provide that the person who is removed from a residential property pursuant to § 13-40.1-101 who knowingly damages the property of other persons may have committed criminal mischief.

ADOPTED RULE

Connecticut

Disclosures – Rights and responsibilities

Effective 7/3/2018, this rule amends Conn. Agencies Regs. § 21-70-2, Required use of disclosure statement, to provide that the text and formatting of the disclosure

statement provided by owners to each prospective resident shall be on a form prescribed by the commissioner.

The rule amends Conn. Agencies Regs. § 21-70-3, Lease renewals and park rules (formerly, Text of disclosure statement), by deleting provisions concerning the contents of the disclosure statement and provides, instead, that a new written lease shall be offered whenever a written or oral lease expires.

The rule adds the following new sections:

Conn. Agencies Regs. § 21-78-1. Choice of vendors by residents;

Conn. Agencies Regs. § 21-79-1. Resident's right to sell;

Conn. Agencies Regs. § 21-79-2. Resale standards;

Conn. Agencies Regs. § 21-82-15. Owner's responsibilities;

Conn. Agencies Regs. § 21-82-16. Resident's responsibilities; and

Conn. Agencies Regs. § 21-83e-1. Complaint resolution.

ADOPTED RESOLUTION
Delaware
Rent – Change in use

2017 DE HR 24. Adopted 7/1/2018.

This resolution establishes the MHOCOA Task Force to review and propose revisions to the Manufactured Home Owners and Community Owners Act, Chapter 70 of Title 25 of the Delaware Code.

The Task Force review shall adopt recommendations regarding revisions to make substantive and technical improvements to the MHOCOA, with priority given to all of the following:

(1) Rent justification, §§7042 - 7046.

(2) Change in land use, §7010.

(3) Right of first offer, §7026.

LEGISLATION
New Hampshire
Discrimination

2017 NH H 1319. Enacted 6/8/2018. Effective 7/8/2018.

This bill amends N.H. Rev. Stat. Ann. § 354-A:10 to prohibit discrimination based on gender identity with respect to the rental or leasing of a dwelling.

LEGISLATION
North Carolina
Ejectment – Expenses

2017 NC S 224. Enacted 6/25/2018. Effective immediately.

This bill amends N.C. Gen. Stat. § 42-46 by adding two new subsections to allow landlords to recover out of pocket expenses in summary ejectment cases.

The out-of-pocket expenses are allowed to be included by the landlord in the amount required to cure a default.

LEGISLATION
Rhode Island
Agent for service of process

2017 RI H 7511 and 2017 RI S 2695. Enacted 7/2/2018. Effective 9/1/2018.

This bill amends 34 R.I. Gen. Laws § 34-18-22.3 to eliminate the penalty of abating rent in cases where a non-resident landlord fails to designate an agent for service of process.

The bill provides that the fine for violating this section is reduced from $500 per violation to $100 per month.

LEGISLATION

Rhode Island

Complaints – Filing fee

2017 RI H 8122 and 2017 RI S 3006. Enacted 7/2/2018. Effective immediately.

This bill amends 34 R.I. Gen. Laws § 31-44-17, Filing of complaint with department -- Notice -- Rules of evidence not binding, to delete the $25 filing fee for any resident or owner of a mobile and manufactured housing park who petitions the director by filing a complaint with the department of business regulation.

ADOPTED RULE

Utah

Sanitation

Effective 5/24/2018, this rule amends Utah Admin. Code r. 392-402, Manufactured Home Community Sanitation.

The purpose of the rule is to establish minimum standards for the sanitation, operation, and maintenance of a manufactured home community.

Section R392-402-2 provides that the rule applies to the repair, maintenance, use, operation, and occupancy of manufactured home communities.

Section R392-402-4 specifies that a construction change is not required in any portion of a manufactured home community that was in compliance before this rule went into effect.

Section R392-402-13 provides that it shall be unlawful for an operator to allow the public to utilize any manufactured home community, housing unit, space, or portion thereof that has been deemed unfit for use until written approval of the local health officer is given.

DEFAULT SERVICING

CASE LAW

RESPA – Qualified written request

CASE NAME: *Wirtz v. Specialized Loan Servicing, LLC*
DATE: *04/03/2018*
CITATION: *United States Court of Appeals, Eighth Circuit. 886 F.3d 713*

Wirtz sued Specialized Loan Servicing, LLC for violations of RESPA and the Minnesota Mortgage Originator and Servicer Licensing Act for failing to respond adequately to his qualified written requests. The district court granted summary judgment in favor of Wirtz, and awarded him a total of $50,962.55 in actual damages, statutory damages, attorney's fees, and costs under the two statutes. Specialized appealed.

The appeals court found that, given the ordinary meaning of "investigation" and the purpose of RESPA, § 2605(e)(2)(B)-(C) imposes a substantive obligation on mortgage loan servicers to conduct a reasonably thorough examination before responding to a borrower's qualified written request.

Wirtz requested the payment history for Wirtz's mortgage loan "from origination to present," and an explanation of why Specialized thought Wirtz's loan was past due when it began servicing the loan. Specialized did not obtain, review, or provide the full payment history as Wirtz requested. Specialized did not address the pre-2011 loan payment history and instead discussed only payments beginning in November 2011.

The district court's ruling did not rest on Specialized's failure to correct the alleged error. Rather, the district court ultimately concluded that Specialized violated RESPA because it "made minimal effort to investigate the error." The district court correctly determined that Specialized failed to comply with § 2605(e)(2)(B)-(C).

The Court also found, however, that proof of actual damages is an essential element of a claim under RESPA, and that there must be a causal link between the alleged violation and the damages.

Here, Wirtz, as a result of Specialized's failures, had to obtain a copy of the pre-2011 payment history from Chase himself. But Wirtz did not claim that he paid any money for those records, and the district court did not award damages on that basis. The district court's award of $80 in actual damages was based on Wirtz's expense to obtain a copy of his bank statements from January 16, 2012, through November 17, 2013. These records, however, related to a separate dispute between Wirtz and Specialized. Therefore, Wirtz did not submit sufficient evidence of actual damages under RESPA.

Further, a borrower cannot recover "additional" damages under § 2605(f)(1)(B) without first recovering actual damages. And Wirtz failed to present sufficient evidence that Specialized engaged in a "pattern or practice of noncompliance" as required for damages under § 2605(f)(1)(B).

The Court reversed the district court's grant of summary judgment for Wirtz and remanded with directions to enter judgment for Specialized on the RESPA claim. Because the Court reversed the judgment on Wirtz's claim under RESPA, and that judgment was the basis for the district court's ruling on the state-law claim, the Court also reversed the judgment on Wirtz's claim under the Minnesota Act and remanded for further proceedings on that claim.

CASE LAW

FDCPA – Monthly statements

CASE NAME: *Jones v. Select Portfolio Servicing, Inc.*
DATE: *05/02/2018*
CITATION: *United States District Court, S.D. Florida. Slip Copy. 2018 WL 2316636*

Plaintiff filed a Complaint, seeking injunctive relief and statutory damages arising out of allegations that Defendant: (1) violated the Florida Consumer Collection Practices Act, (the "FCCPA") by communicating with Plaintiff, as a debtor, despite knowing that Plaintiff was represented by counsel with respect to the alleged debt; (2) violated the FCCPA by communicating with Plaintiff with such frequency and in such a manner as could be reasonably expected to harass Plaintiff, as a debtor; and (3) violated the FDCPA by communicating with Plaintiff in connection with the collection of a debt when Defendant knew that Plaintiff was represented by counsel with respect to the alleged debt. Defendant filed a Motion to Dismiss for failure to state a claim.

The Court noted that the FDCPA prohibits communications with debtors who are represented by counsel if such communication was made "in connection with the collection of any debt." However, Regulation Z of TILA requires that mortgage service providers provide debtors with monthly statements. Recognizing this potential conflict, the Consumer Financial Protection Bureau issued a bulletin expressly stating that a "servicer acting as a debt collector would not be liable under the FDCPA for complying with these [TILA monthly mortgage statement] requirements."

The Court found that the Statements were based on model form H-30(B) Sample Form of Periodic Statement with Delinquency Box § 1026.41, in Appendix H to Part 1026 of Regulation Z, and the minor discrepancies in language, when taken in the context of the document was an otherwise carbon copy of form H-30(B), did not take the Statements out of the realm of monthly statement and into the realm of debt collection communication.

Accordingly, Defendant's motion to dismiss Count Three with prejudice was granted as to the Statements.

Florida courts have also held that monthly mortgage statements do not constitute an attempt to collect a debt

under the FCCPA. Accordingly, Count One of Plaintiff's Complaint was also dismissed.

Finally, Plaintiff's allegation that Defendant made "relentless requests for payment," and communicated "a number of other times" did not provide sufficient information to make out a claim that was plausible on its face. There was no discussion of the medium of communication, time of day, duration, language used, whether any of Plaintiff's family was contacted, and "relentless" and a "number of other times" were not a sufficient description of the quantity of communications. As to the Statements, they were only sent once a month by mail, and as they are substantially identical to the TILA model form, they did not contain any abusive or disagreeable language.

Defendant's Motion to Dismiss Count Two granted.

CASE LAW

FDCPA – Loan modification

CASE NAME: *Thomas v. Select Portfolio Servicing, Inc.*
DATE: *05/24/2018*
CITATION: *United States District Court, E.D. California. Slip Copy. 2018 WL 2356758*

Plaintiff alleged a claim specifically pursuant to the FDCPA, 15 U.S.C. § 1692e, that Chase Home Finance, whose liabilities SPS assumed, sent "Plaintiff communications (namely the modification agreement) that misrepresented the character and legal status of Plaintiff's debt." The alleged "miscommunications in the modification included, but were not limited to, (1) the failure to include an explanation as to how the balloon payment was calculated, (2) the failure to provide an amortization schedule, and (3) the failure to inform Plaintiff about the existence of a balloon payment at maturity." 15 U.S.C. § 1692e provides that "[a] debt collector may not use any false, deceptive, or misleading representation in connection with the collection of any debt."

The Court found, however, that Plaintiff failed to allege facts to show that SPS made a false representation of the character, amount, or legal status of any debt in connection with the collection of a debt. Instead, Plaintiff alleged that when she read the loan modification agreement she believed that the balloon payment provision was not applicable to her until she consulted an attorney in 2017, somehow making her misreading of the agreement a "false representation" by SPS or its predecessor in interest. Plaintiff did not point to any legal authority which indicated the FDCPA has been applied to claims such as Plaintiff's or with respect to loan modification terms in general.

Further, even if Plaintiff's loan modification agreement could somehow provide the basis for a FDCPA claim, it would be barred by the applicable statute of limitations. The FDCPA requires that any action be brought "within one year from the date on which the violation occurs." The allegedly violative conduct involved representations made in her 2010 loan modification agreement and Plaintiff did not file her complaint until 2018.

Defendants motion to dismiss the FDCPA claim granted.

CASE LAW

FDCPA – Debt buyers

CASE NAME: *Norman v. Allied Interstate, LLC*
DATE: *05/25/2018*
CITATION: *United States District Court, E.D. Pennsylvania. --- F.Supp.3d ----. 2018 WL 2383099*

Plaintiff alleged that the collection letters she received from debt buyer LVNV and Allied, the agency it hired to pursue collection, violated the FDCPA because they were misleading—specifically, that the letters implied the debts were legally enforceable, when in fact they were not, and that the letters failed to communicate effectively her right to dispute the validity of the debts. In a joint Motion to Dismiss, the defendants disputed

that their letters violated the FDCPA, and asserted that the debt buyer defendant could not be liable as a matter of law.

The Court found that debt buyers whose principal purpose of business is debt collection, either directly or through another collector, are debt collectors under the Act.

Here, LVNV admitted in its brief that it was in the business of debt-buying. Also, LVNV's website described the company as a buyer of consumer debt. There was no reference to any other form of commercial activity. Simply because LVNV "outsources" its debt collection to subcontractors did not mean that LVNV shed its essential character as a debt collection business or was somehow converted into something other than a debt collector.

Further, vicarious liability is permissible under the FDCPA, as long as both entities are "debt collectors" within the Act.

The Court next found that plaintiff plausibly alleged that defendants violated Section 1692e of the FDCPA, which prohibits "any false, deceptive, or misleading representations" in the collection of any debt. In the specific context of a debt-collection letter, the least sophisticated debtor could be misled into thinking that 'settlement of the debt' referred to the creditor's ability to enforce the debt in court rather than a mere invitation to settle the time-barred debt. In addition, the collection letter stated that Allied was not obligated to accept any payment proposal, and asks the consumer to call to discuss "potential settlement options," implying that Allied had some legal recourse if the parties could not agree on a "settlement."

Finally, the Court found plaintiff plausibly alleged that Allied's letters violated Section 1692g, which grants consumers 30 days to dispute the validity and request verification of any alleged debt, and requires debt collectors to "cease collection of the debt" until they have obtained and provided that verification to consumers.

Allied's request for payment did not, "standing alone," violate the Act. Rather, it was Allied's request for payment and warning that checks would be immediately deposited and not returned, without explaining that its demand did not override the consumer's rights under section 1692g that rendered the validation notice ineffective.

Motion to Dismiss denied.

CASE LAW

Foreclosure – Attorney's fees

CASE NAME: *Bayview Loan Servicing, LLC v. Lindsay*
DATE: *06/01/2018*
CITATION: *Supreme Court of Pennsylvania. --- A.3d ---. 2018 WL 2450869*

Bayview Loan Servicing, LLC, the mortgagee's assignee, filed a complaint for foreclosure. Lindsay, the mortgagor, answered and asserted the affirmative defense that Bayview had failed to provide him with a 30-day notice of foreclosure. The Court of Common Pleas denied Bayview's motion for summary relief, following which Bayview voluntarily discontinued the case without prejudice to refile. Lindsay filed a motion for attorney fees and costs. The trial court denied the motion, and Lindsay appealed. The Superior Court affirmed, and Lindsay again appealed.

The Pennsylvania Supreme Court held that an affirmative defense to foreclosure was not an "action arising under" the Loan Interest and Protection Law, commonly referred to as "Act 6," within the meaning of the provision authorizing an award of attorney fees to the prevailing party.

CASE LAW

Convenience fees

CASE NAME: *Brown v. Capital One, N.A.*
DATE: *06/25/2018*
CITATION: *United States District Court, D. Maryland, Southern Division. Slip Copy. 2018 WL 3105768*

Plaintiff purchased a vehicle from "Easterns Mega Center of Laurel" and financed the purchase through a Retail Installment Sale Contract ("RISC") which was subsequently assigned to Defendant. The RISC affirmatively elected to be governed under the Maryland Credit Grantor Closed End Credit Provisions, Md. Code Ann., Comm. Law. § 12-1001 et seq. ("CLEC"). The principal amount owed by Plaintiff was $23,323.65. Defendant received payments on Plaintiff's RISC totaling less than the principal amount owed (or amount financed), including approximately $10,000 towards interest, costs, fees, or other charges. Defendant repossessed the vehicle, sold it, and demanded Plaintiff pay a deficiency balance of $11,226.50. Plaintiff alleged that Defendant charged a "convenience fee" to Plaintiff and more than 500 other CLEC customers each year.

Defendant allegedly charged this convenience fee throughout the life of the loans when collecting payments by phone through a live representative or through an automated system and through the internet, in violation of Maryland law.

After Plaintiff filed suit, Defendant notified Brown by letter that it had waived and credited her for all of the convenience fees, waived any outstanding balance on the loan, affirmatively stated that it would not undertake any efforts to collect any amounts from Plaintiff and deleted the trade line from her credit reports.

After removal, the Court found that Plaintiff could not recover damages under CLEC § 12-1018(a)(2) because Defendant never collected payments in excess of the original principal amount of the loan. Furthermore, Defendant did not seek a deficiency judgement against Plaintiff for the remaining balance of her loan, and Plaintiff was not seeking any injunctive or declaratory relief.

The Court rejected Plaintiff's argument that she was entitled to treble damages under § 12-1018(b) for each unauthorized convenience fee regardless of whether she could recover damages under § 12-1018(a)(2). According to Plaintiff, § 12-1018(b) provides for immediate recovery of any knowingly-charged fee not authorized by the statue because it contains no language pertaining to the principal amount of the loan. However, § 12-1018(b) provides for treble damages for fees "collected in excess of that authorized by this subtitle." Since § 12-1018(a)(2) permits a lender that violates the statute to collect the principal amount of the loan, Defendant had not collected any excess fees.

Defendant's Motion to Dismiss granted.

CASE LAW

TCPA – Autodialer

CASE NAME: *Dominguez v. Yahoo, Inc.*
DATE: *06/26/2018*
CITATION: *United States Court of Appeals, Third Circuit. --- F.3d ----. 2018 WL 3118056*

Dominguez purchased a cell phone with a reassigned telephone number. The prior owner of the number had subscribed to Yahoo's Email SMS Service, through which a user would receive a text message each time an email was sent to the user's Yahoo email account. Because the prior owner of the number never canceled the subscription, Dominguez received a text message from Yahoo every time the prior owner received an email. In an attempt to turning off the notifications, Dominguez pursued various courses of action, all of which proved unsuccessful. Ultimately, Dominguez received

approximately 27,800 text messages from Yahoo over the course of 17 months.

Dominguez filed a putative class action alleging that Yahoo had violated the Telephone Consumer Protection Act (TCPA). Under the TCPA, it is unlawful to make or send a non-emergency call or text message "using any automatic telephone dialing system ... to any telephone number assigned to a ... cellular telephone service." Dominguez's lawsuit depended upon his assertion that Yahoo's Email SMS Service was an "automatic telephone dialing system," i.e., an autodialer. The TCPA defines an autodialer as "equipment which has the capacity—(A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers."

The District Court first granted summary judgment in favor of Yahoo in 2014, concluding that the Email SMS Service did not have the capacity to store or produce telephone numbers using a random or sequential number generator. In 2015, while Dominguez's appeal of that decision was pending, the FCC issued a declaratory ruling and order (the 2015 Declaratory Ruling), which concluded that "the capacity of an autodialer is not limited to its current configuration but also includes its potential functionalities." In light of this ruling, the appeals court vacated the District Court's judgment and remanded the case for further consideration. On remand, Dominguez amended his complaint to allege that the Email SMS Service "ha[d] the potential capacity to place autodialed calls."

The District Court again granted summary judgment in favor of Yahoo and Dominguez again appealed.

While the appeal was pending, the United States Court of Appeals for the District of Columbia Circuit issued its opinion in *ACA International v. FCC*. The D.C. Circuit held that the FCC had exceeded its authority by interpreting the term "capacity" to include any latent or potential capacity and described the FCC's approach as "utterly unreasonable in the breadth of its regulatory [in]clusion."

In light of the D.C. Circuit's holding, Dominguez could no longer rely on his argument that the Email SMS Service had the latent or potential capacity to function as autodialer. The only remaining question, then, was whether Dominguez provided evidence to show that the Email SMS Service had the present capacity to function as an autodialer.

The Court found that the Email SMS Service sent messages only to numbers that had been individually and manually inputted into its system by a user.

Affirmed.

CASE LAW

Forbearance – FCRA

CASE NAME: *Felts v. Wells Fargo Bank, N.A.*
DATE: *06/27/2018*
CITATION: *United States Court of Appeals, Eleventh Circuit. --- F.3d ----. 2018 WL 3130674*

Felts refinanced the mortgage on her home through a new loan extended by Fannie Mae, executing a Note and Mortgage that required her to make monthly mortgage payments of $2,197.38. Wells Fargo acted as the servicer for the Loan.

After Felts lost her job, she contacted Wells Fargo to discuss a revised payment plan and enrolled in an unemployment forbearance program offered by Fannie Mae and administered by Wells Fargo ("the Plan"). The Plan Letter explained that Felts was required to make "monthly forbearance plan payments" of $25.00 per month beginning in September 2012 and ending in February 2013.

The Plan Letter provided that the regular mortgage payments would accrue during the course of the Plan. The Plan Letter further noted that "[e]ven though you

are participating in this Plan, you remain responsible for all other terms and conditions of your existing mortgage."

A Wells Fargo representative explained the terms of the Plan to Felts in a recorded telephone conversation. Felts asked whether her payments would still be considered late. The Wells Fargo representative responded "[y]es. Because it's not the contractual payment." Felts then confirmed that she understood.

Felts made timely monthly payments of $25.00 per month through January 2013 in accordance with the terms of the Plan. She then applied for a loan modification. During a three-month trial period for the loan modification, Wells Fargo required Felts to make full payments on the Loan, which she did. Felts subsequently paid off the remaining balance on the Loan by June 1, 2013.

Felts attempted to purchase a new home but found that Wells Fargo had reported the Loan to the CRAs as "past due" and "delinquent."

Felts filed numerous disputes with all three major CRAs regarding the Loan. In response, Wells Fargo reported the account status of the Loan as "paid in full," and changed the "amount past due" to $0.00. However, Wells Fargo reported that Felts' account was past due from August 2012 through May 2013.

Felts was denied financing for the home and brought suit, alleging violations of the FCRA.

The district court granted Wells Fargo's motion for summary judgment, concluding that there was no genuine factual dispute as to the accuracy of the information reported. Felts appealed.

The appeals court found that Wells Fargo was required to furnish information to the CRAs regarding Felts' payment status and history for the Note Felts signed for the Loan. Felts' apparent compliance with the terms of a second, separate agreement—the Plan—had no bearing on the accuracy of the information Wells Fargo reported to the CRAs regarding Felts' compliance with the terms of her original agreement unless the Plan legally modified the terms of the Note. As Felts did not identify any fact establishing that the Plan legally modified the Note, the information Wells Fargo reported regarding Felts' compliance with the terms of the Note was not inaccurate.

Affirmed.

LEGISLATION
Connecticut
Payoff statement

2018 CT S 485. Enacted 6/4/2018. Effective 10/1/2018.

This bill adds a new, as yet uncodified section to provide that a judgment lienholder shall, upon written request, provide a payoff statement, in writing, to the person requesting the payoff statement.

The judgment lienholder shall not impose any fee for the first payoff statement requested within a calendar year, unless the judgment debtor requests expedited delivery of such statement.

LEGISLATION
New Hampshire
Consumer complaints

2017 NH S 92. Enacted 6/8/2018. Effective 8/7/2018.

This bill amends N.H. Rev. Stat. Ann. § 361-A:4-a to provide that consumer complaints naming retail sellers or sales finance companies, which are filed with the office of the commissioner, shall be forwarded via certified or registered mail to the retail seller or sales finance company for response within 10 days of receipt by the department. Retail sellers or sales finance companies shall, within 10 (formerly, 30) days after

receipt of such complaint, send a written acknowledgment thereof to the consumer and the banking department. Not later than 30 (formerly, 60) days following receipt of such complaint, the retail seller or sales finance company shall conduct an investigation of the complaint.

Retail sellers or sales finance companies who are unable to comply with the time frames prescribed may request a waiver. Waivers shall not be granted or considered unless the request is received by the banking department within 20 (formerly, 50) days following company's receipt of the complaint.

The bill amends N.H. Rev. Stat. Ann. § 397-A:15-a, re: Nondepository Mortgage Bankers, Brokers, and Servicers, to provide that consumer complaints naming licensees which are filed with the office of the commissioner, shall be forwarded for response within 10 days of receipt by the department. Licensees shall, within 10 (formerly, 30) days after receipt of such complaint, send a written acknowledgment thereof. Not later than 30 (formerly, 60) days following receipt of such complaint, the licensee shall conduct an investigation of the complaint.

Licensees which are unable to comply with the time frames prescribed may request a waiver. Waivers shall not be granted or considered unless the request is received by the banking department within 20 (formerly, 50) days following the licensee's receipt of the complaint.

LEGISLATION

Pennsylvania

Foreclosure

2017 PA H 653. Enacted 6/19/2018. Effective 12/17/2018.

This bill adopts the Vacant and Abandoned Real Estate Foreclosure Act, 15 Pa. Cons. Stat. §§ 2301 – 2308, Subchapter A, to maintain the due process rights of owners of real estate and to reduce unnecessary delays in an action of mortgage foreclosure or an action for possession or similar actions to recover real estate that is vacant and abandoned.

The bill provides that "Creditor" means a person authorized to enforce an obligation secured by a mortgage or an authorized agent of the creditor, including a servicer.

The bill provides for the certification of vacant and abandoned mortgaged property.

The bill also adds 15 Pa. Cons. Stat. §§ 2309 – 2312, Subchapter B, Sheriff's Commission And Creditor Attorney Fees, and provides that, if the execution sale of a mortgaged property is stayed, canceled, withdrawn or postponed due to bankruptcy, because the mortgage is decelerated and brought current, in whole or in part, is paid in full or as a result of a loan modification of the mortgage loan or other resolution of the foreclosure action or for another reason, the sheriff shall not be entitled to a commission.

After the commencement of foreclosure or other legal action with respect to a residential mortgage, attorney fees that are reasonable and actually incurred may be charged to the residential mortgage debtor.

Prior to the commencement of foreclosure, attorney fees that are reasonable and actually incurred not in excess of 0.1% of the amount of the then existing base figure may be charged.

No attorney fees may be charged for legal expenses incurred for a residential mortgage prior to or during the 30-day notice period provided under section 406 of the Loan Interest and Protection Law.

LEGISLATION
Rhode Island
Mediation

2017 RI H 7385. Enacted 6/28/2018. Effective immediately.

This bill extends the sunset provisions in regard to mediation conference prior to mortgage foreclosure under Chapter 34-27 entitled "Mortgage Foreclosure and Sale to 7/1/2023 (formerly, 7/1/2018).

The bill also amends 34 R.I. Gen. Laws § 34-27-3.2 to limit the amount a HUD-approved agency may receive for a mediation ($500) (formerly, per engagement) and for a filing fee ($100).

DUTY TO SERVE

PRESS RELEASE
FHFA
"Snapshots"

Issued 6/28/2018.

FHFA Publishes New "Snapshots" of Fannie Mae and Freddie Mac's Duty to Serve Plans to Help Stakeholders Identify Opportunities.

Fannie Mae and Freddie Mac (the Enterprises) engaged extensively with stakeholders to develop their respective Duty to Serve Plans (DTS), which went into effect on January 1, 2018. The Plans provide detailed information on how the Enterprises will provide leadership and facilitate a secondary market for very low-, low-, and moderate-income families in three specified areas as directed by statute: manufactured housing, affordable housing preservation, and rural housing.

The DTS Plans detail opportunities for financial services organizations, nonprofits and other industry participants to work with the Enterprises to better serve the three target markets. FHFA is committed to facilitating these opportunities, so to help simplify the process and help stakeholders find the most relevant part of each Plan, we've created 11 Snapshots that further break down the three main markets so interested parties can quickly find a topic or opportunity of interest.

The 11 DTS Snapshots are available on FHFA's website (https://www.fhfa.gov/PolicyProgramsResearch/Programs/Pages/Duty-to-Serve.aspx) and serve as a guide for stakeholders:

•Chattel

•Manufactured Housing Communities

•Multifamily Rental Production

•Rural Rental Production

•State and Local Multifamily Housing

•State and Local Single-Family Housing

•Energy Efficiency

•Small Financial Institutions

•Small Multifamily and Single-Family Rental

•High-Needs Rural Regions and High-Needs Rural Populations

•Residential Economic Diversity.

INSTALLATION

ADOPTED RULE
Alabama
Move permits

Effective 7/15/2018, this rule amends Ala. Admin. Code r. 810-4-2-.09, re: Move Permits, to provide that the move permit obtained from the county official who administers the manufactured home registration laws does not relieve anyone moving a manufactured home from the

move requirements established by the Alabama Manufactured Housing Commission.

ADOPTED RULE
Iowa
Architectural services – Accessory buildings

Effective 7/25/2018, this rule amends Iowa Admin. Code r. 193B-5.1, .3, .4 related to professional architectural services.

The rule provides that "Accessory buildings" means a building or structure of an accessory character and miscellaneous structures not classified in any specific occupancy or use. "Accessory buildings" shall be constructed, equipped and maintained to conform to the requirements corresponding to the fire and life hazard incidental to the buildings' occupancy. "Accessory buildings" is intended to encompass the uses listed in Group U of the 2015 International Building Code.

"Factory-built buildings" means any structure which is, wholly or in substantial part, made, fabricated, formed, or assembled in manufacturing facilities for installation, or assembly and installation, on a building site. "Factory-built buildings" includes the terms "mobile home," "manufactured home," and "modular home."

PRESS RELEASE
New York
Installation complaints

New York Attorney General Barbara D. Underwood announced an order directing Walker's Manufactured Housing, Inc. and its owner, Stanley Hall, to explain their failure to sit for testimony as required by the Attorney General's subpoena.

Multiple consumers in Jefferson County filed complaints with the Attorney General's office regarding the advertising, sales, and installation practices of Walker's Manufactured Housing, Inc. Complaints included failure to install homes to engineers' specifications; lengthy delays in delivering homes; delivery of incomplete homes; and failure to provide complete work orders and alterations of work orders. When consumers had previously complained, the company disclaimed responsibility or provided excuses for why the expected work was delayed.

One family that did business with Walker's Manufactured Housing – including an ill father and veteran – alleged they lived in their camper on newly purchased land for over five months in daily anticipation of their new home delivery. When the home arrived in the middle of November, the family says it did not have a fireplace—the most important personalized feature in the home for the family. The home also didn't have carpeting, skirting, sewage, or water. After delivery, the family claims Mr. Hall worked on the home for two days and then abandoned the site completely. When the family refused to sign documents accepting the incomplete home, Walker's filed a lien on the property. The consumers were forced to rent a new home at great personal expense. The family never received their deposit back from Walker's, and were shocked to learn later that Mr. Hall listed their unoccupied home and land for sale as his own.

LENDING

LEGISLATION
Rhode Island
Electronic recording

2017 RI H 7080 and 2017 RI S 2145. Enacted 6/29/2018. Effective 7/1/2019.

This bill adds Chapter 13.2, the Uniform Real Property Electronic Recording Act to Title 34 of the General Laws entitled "Property," 34 R.I. Gen. Laws §§ 34-13.2-1 through 34-13.2-6.

The bill provides that, if a law requires, as a condition for recording, that a document be an original, be on paper or another tangible medium, or be in writing, the requirement is satisfied by an electronic document.

If a law requires, as a condition for recording, that a document be signed, the requirement is satisfied by an electronic signature.

BULLETIN

South Carolina

Dollar amounts

The Administrator of the Department of Consumer Affairs announces changes in dollar amounts pursuant to Sections 37-1-109 and 37-6-104(1)(e). The Administrator is required to announce these changes by publication in the State Register by April 30 of each even numbered year.

Section	Was	Now
2.104(1)(e) Consumer Credit Sale	90,000.00	92,500.00
2.106(1)(b) Consumer Lease	90,000.00	92,500.00
2.203(1) Delinquency Charge – Sales	18.00	18.50
2.203(2) Minimum Delinquency Charge	7.20	7.40
2.407(1) Security Interest – Sales	3,600.00	3,700.00
	1,080.00	1,110.00
2.705(1)(a) Delinquency Charge – Rental Purchase	10.40	11.60
2.705(1)(b) Delinquency Charge – Rental Purchase	5.60	5.80
3.104(d) Consumer Loans	90,000.00	92,500.00
3.203(1) Delinquency Charge – Loans	18.00	18.50
3.203(2) Minimum Delinquency	7.20	7.40
3.510 Land as Security – Supervised Loans	3,600.00	3,700.00
3.511 Maximum Loan Term	3,600.00	3,700.00
	1,080.00	1,110.00
3.514 Attorney's Fees – Supervised Loans	3,600.00	3,700.00
5.103(2), (3) & (4) Deficiency Judgment	5,450.00	5,550.00
10.103 Prepayment Penalty	255,000.00	270,000.00
23.80 Prepayment Penalty	255,000.00	270,000.00

FINAL RULE

HUD

FHA - Inspection

Effective 8/2/2018, the rule amends 24 CFR Parts 200, 203.

Streamlining Inspection Requirements for Federal Housing Administration (FHA) Single-Family Mortgage Insurance: Removal of the FHA Inspector Roster.

Section 200.145, Property and mortgage assessment, has been amended by adding:

(c) For all new construction as well as structural repairs and/or renovations of existing properties, to the extent that an inspection is required to determine if construction quality of a one- to four-unit property is acceptable as security for an FHA-insured loan, the following requirements apply:

(1)(i) In areas where local jurisdictions provide building code enforcement and the requisite documentation, the lender shall provide a copy of:

(A) The building permit, or its equivalent, and a copy of the certificate of occupancy, or its equivalent; or

(B) A satisfactory inspection notice for work completed, or its equivalent.

(ii) The documentation provided under paragraph (c)(1)(i) of this section shall be considered satisfactory evidence of completion of the work.

(2) In jurisdictions that do not provide building code enforcement and requisite documentation, three inspections are required for new construction. For existing construction, only one inspection and certification of work completed for structural repairs and renovations is required. For both new and existing construction, the lender shall, in order to ensure compliance with FHA requirements:

(i) Select a Residential Combination Inspector (or its successor designation) or a Combination Inspector (or its successor designation) certified by the International Code Council (or its successor organization) who is licensed or certified as a home inspector in accordance with the applicable State and local requirements governing the licensing or certification of those jurisdictions that license or certify such inspectors in the respective jurisdiction. The lender shall provide a certification from such inspector that the new construction and/or structural repair or renovation work is completed satisfactorily and in compliance with any applicable building code.

(ii) In the absence of such Residential Combination Inspector and Combination Inspector, the lender shall obtain an inspection performed by a third party, who is a registered architect, a professional engineer, or a trades person or contractor, and who has met the licensing and bonding requirements of the State in which the property is located. The lender shall provide a certification from such inspector that the inspector is licensed and bonded under applicable State law, and that the new construction and/or structural repair or renovation work is completed satisfactorily and in compliance with any applicable building code.

The rule removes the undesignated center heading "FHA Inspector Roster" and §§ 200.170 through 200.172.

LICENSING

ADOPTED RULE

Georgia

Loan or finance company – Bank Secrecy Act

Effective 7/17/2018, this rule adds Ga. Comp. R. & Regs. 80-11-1-.06, Compliance with Federal Requirements, to provide that every loan or finance company shall develop and implement a written anti-money laundering program and comply with the filing requirements, recordkeeping requirements, currency transaction reporting, suspicious activity reporting, and other requirements set forth in the Bank Secrecy Act.

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.

LEGISLATION

New Hampshire

Mortgage licensees – De minimus exemption

2017 NH S 314. Enacted 6/8/2018. Effective 8/7/2018.

This bill amends N.H. Rev. Stat. Ann. § 397-A:2(I) to add new subparagraph (d) to provide that it shall be a rebuttable presumption that an individual is not engaged in the business of a mortgage banker, mortgage broker, mortgage servicer, or mortgage originator if the individual is not involved in more than 3 loans in any consecutive 12-month period.

SALES AND WARRANTIES

CASE LAW

Lease – Option to buy

CASE NAME: *Schreiber v Ally Financial Inc.*
DATE: *06/15/2018*
CITATION: *United States District Court, Southern District Of Florida, Miami Division, Civil Action No. 1:14-cv-22069*

This class action centers on a standardized lease contract created and copyrighted by Ally called the "SmartLease." Each SmartLease provided the lessee with an option to purchase the subject vehicle at the end of the lease term for a set price, "plus official fees and taxes," defined as "all government license, title, registration, testing, and inspection fees for the vehicle" and "all taxes on the lease or the vehicle that the government levies."

When Schreiber communicated to Ally that he wished to exercise his option to purchase the car for $25,889.70, plus official fees and taxes, Ally, claimed that it was unable to sell the vehicle to Schreiber under Florida law because it did not hold a dealer's license in Florida. Ally, therefore, directed Schreiber to purchase the car through a dealership, and recommended that Schreiber do so from Miami Lakes AM, LLC, a non-party dealership that originated the SmartLease.

Miami Lakes AM charged him $25,389.70 as the cash price for the vehicle, a $799.99 pre-delivery service fee, and a $100 documentation fee, in addition to various governmental fees and taxes. Thus, Mr. Schreiber was required to pay $399.99 more than the purchase option price listed in the SmartLease agreement. Neither the pre-delivery service fee nor the documentation fee was disclosed on the SmartLease agreement.

Mr. Schreiber filed a two-count action against Ally, on behalf of himself and a putative class of similarly situated automobile purchasers. His first claim asserted that Ally violated the federal Consumer Leasing Act, 15 U.S.C. § 1667, et seq., by failing to disclose that he would be required to purchase the vehicle from a dealer and that he would be required to pay additional fees to the dealer. Mr. Schreiber's second claim asserted that Ally breached its SmartLease with him by refusing to sell the vehicle to him at the price stated in the contract.

Ally agreed to resolve the claims asserted in this action through a class Settlement with a value of almost $20 million. The Settlement offers Class Members up to 100% of the fees they were charged beyond the set price listed in their SmartLease agreements. The estimated average amount of such fees paid by each Class Member is approximately $238.06.

Class Members agreed to give a standard, broad release to the "Released Parties," defined essentially as Ally and all related entities and persons. In addition, the Settlement assigned to Ally any claims against dealerships for charging impermissible fees on behalf of Class Members who receive a Settlement Payment. At the same time, Ally agreed to indemnify Settlement Class Members from claims asserted by dealerships that may arise out of Ally pursuing such indemnification rights.

The Settlement Agreement provides that Class Counsel agree to limit their request to the Court for attorneys' fees and expenses to no more than $2.95 million.

LEGISLATION
Pennsylvania
Document preparation fees

2017 PA H 1898. Enacted 6/28/2018. Effective 8/27/2018.

This bill adds a new subsection to 63 Pa. Stat. Ann. § 818.27.1(a)(2), to provide that a licensed dealer who has a contract with the Department of Transportation relating to authorization of messenger and agent services may charge the purchaser of a vehicle a licensing cost permissible under 75 Pa. Cons. Stat. Ch. 19 (relating to fees) and the Unfair Trade Practices and Consumer Protection Law, and regulations promulgated thereunder, to include a documentary preparation charge for complying with Federal and State laws and regulations relating to the privacy and safeguarding of customer information requirements, providing financial services to the customer and preparation and retrieval of documents.

TITLING AND PERFECTION

LEGISLATION
North Carolina
Unavailable title

2017 NC S 411. Enacted 6/22/2018. Effective immediately.

This bill amends N.C. Gen. Stat. § 20-58.4A(i) to provide that all individuals and lienholders who conduct at least five transactions annually shall utilize the electronic lien system to record information concerning the perfection and release of a security interest in a vehicle.

The bill also revises the law governing when a motor vehicle dealer that does not have a motor vehicle's statement of origin or certificate of title may transfer title to the motor vehicle.

The bill amends N.C. Gen. Stat. § 20-79.02(g) to provide that prior to January 1, 2021 (formerly, 2019), a new motor vehicle dealer may, but is not required to, display a Loaner/Dealer license plate on a service loaner vehicle. Beginning on or after January 1, 2021 (formerly, 2019), a new motor vehicle dealer shall display an LD license plate on any new motor vehicle placed into service as a loaner vehicle.

The bill amends N.C. Gen. Stat. § 20‑79.1(d) to provide that a dealer shall:

(3) Within 20 days of the issuance of a temporary registration plate or marker (formerly, within 10 working days), mail or deliver the application and fees for processing, unless the sale has been rescinded (deleting, in writing) by all parties to the contract.

The bill amends N.C. Gen. Stat. § 20-183.4C(a)(1) to provide that a new vehicle must be inspected before it is delivered to a purchaser (formerly, sold).

LEGISLATION
North Carolina
Certificate of title

2017 NC S 145. Enacted 6/25/2018. Effective as noted.

Effective 10/1/2018, this bill amends N.C. Gen. Stat.§ 20-58.4(e1) to provide that where an owner is unable to secure a release from a secured party with respect to manufactured homes, the term "owner" shall mean any of the following: i) the owner of the manufactured home; ii) the owner of real property on which the manufactured home is affixed; or iii) a title insurance company as insurer of an insured owner of real property on which the manufactured home is affixed.

Also effective 10/1/2018, the bill amends N.C. Gen. Stat. § 20-58.3A(g) to provide that the Division shall not be subject to a claim related to the failure to acknowledge or give effect to an expired perfection of a security interest on a certificate of title for a manufactured home if the claim is based on the automatic expiration of a perfection of a security interest.

Effective 7/1/2018, the bill amends N.C. Gen. Stat. §§ 153A-357(e) and 160A-417(d), concerning improvement permits for manufactured homes, to provide that, where the improvements to a real property leasehold are limited to the purchase, transportation, and setup of a manufactured home, the purchase price of the manufactured home shall be excluded in determining whether the cost of the work is $30,000 or more (deleting the qualifier that the home be one for which there is a current certificate of title).

TEMPORARY RULE
Oregon
Park trailers

Or. Admin. R. 918-525-0005, effective 6/1/2018, expires 11/27/2018.

This rule is needed to provide a path for the Oregon Department of Transportation to issue titles to recreational park trailers. The Oregon Department of Transportation has indicated that they rely on the definition of recreational vehicle adopted by the Building Codes Division in order to have a path to issue titles. This rule expands the definition of recreational vehicle to include, only for Oregon Department of Transportation purposes, a recreational park trailer.

LEGISLATION
Rhode Island
Park trailers

2017 RI H 7605 and 2017 RI S 2488. Enacted 6/4/2018. Effective immediately.

This bill amends 31 R.I. Gen. Laws § 31-3.1-2 to provide that exclusions from the requirements to obtain a certificate of title applicable to trailers do not apply to a travel trailer, a fifth wheel trailer, or park trailer, as defined in § 31-1-3.

ZONING

LEGISLATION
Connecticut
Non-conforming use

2018 CT H 5487. Enacted 6/11/2018. Effective 7/1/2018.

This bill amends Conn. Gen. Stat. § 8-2 to prohibit municipal zoning commissions from requiring a special permit or special exception for the continuance of a use, building or structure made nonconforming by new zoning regulations.

LEGISLATION
Illinois
Suits against counties

2017 IL H 4711. Enacted 6/29/2018. Effective immediately.

This bill amends 55 Ill. Comp. Stat. 5/5-12017, under the Counties Code, 60 Ill. Comp. Stat. 1/110-65, under the Township Code, and 65 Ill. Comp. Stat. 5/11-13-15, under Municipal Law, to provide that, except in relation to county owned, township owned, or municipality

owned property, the provisions do not authorize any suit against a county, township or municipality or its officials for any act relating to zoning administration, enforcement, or implementation or any ordinance, resolution, or other zoning regulation.

ABOUT THE EDITORS

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

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

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