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!

Thank you for reading the September Manufactured Housing Law Update. We hope your plans for Halloween and Thanksgiving are taking shape.

If you are a community operator, lender, servicer, or any other business that touches California, there is lots for you to read in this update.

In addition, there are many TCPA, SCRA, FDCPA and Fair Housing /Fair Credit items that our readers may be interested in.

Enjoy the rest of Autumn!

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COMMUNITIES

CASE LAW

Rent increase – Market rent

CASE NAME: *Sandhill Acres Home Owners Association v. Sandhill Acres MHC, LLC*
DATE: *09/13/2018*
CITATION: *Superior Court of Delaware. Not Reported in Atl. Rptr. 2018 WL 4405833*

To raise the lot rent by more than inflation under the Rent Justification Act, a manufactured home community landowner must show that the proposed rent increase is directly related to operating, maintaining or improving the manufactured home community, and justified by 1 or more factors listed under subsection (c) of Del. Code Ann. tit. 2, 5 § 7042. Sandhill Acres argued that its proposed rent increase was based upon installing an improved water filtration system and was directly related to improving the community. Subsection (c) lists eight factors. The one at issue here was market rent, defined as "that rent which would result from market forces absent an unequal bargaining position between the community owner and the home owners." The first six factors relate to capital improvements and changes in taxes, utility charges, insurance and financing costs, reasonable operating and maintenance expenses, and repairs other than for ordinary wear and tear. As such, the first six relate to the cost side of operating, maintaining or improving a mobile home park. The seventh factor is market rent and it too must relate to operating, maintaining or improving a manufactured home park. The eighth factor involves rental assistance provided by the community owner to the residents.

The Delaware Manufactured Home Rehabilitation Authority appointed an Arbitrator who concluded that the $12,185 cost to improve the community's water filtration system was related to improving the community, reasoning that the community had experienced problems with the water and that the improved water filtration system addressed those problems and thus benefitted the community. The Arbitrator further decided that if a landowner invests in its development, and therefore has improved the 'community,' it can also reap the reward from that investment through higher than inflation rent increases, and that Sandhill Acres could raise its rent to market rent, not just the rent that would cover the cost of the improved water filtration system.

The Arbitrator decided that the market rent was $455 per lot and that the Act's disclosure requirements were satisfied.

The Sandhill Acres Home Owners Association appealed.

The Court found that Sandhill Acres did not establish that its costs increased in such a manner that caused its original expected return to decline. Sandhill Acres only established that it spent $12,185 to improve the water filtration system. Sandhill Acres did not establish that this was an increase in its costs. Sandhill Acres also did not establish that because of this expenditure its original expected return had declined. In order for Sandhill to justify an increase to market rent for its existing tenants it would have had to offer evidence about its original costs and original expected return and how the expenditure of $12,185 altered that relationship. A community owner incurs costs each year in order to operate, maintain or improve a mobile home community. That is not enough. A community owner must show an increase in its costs such that its expected return has declined in order to move to market rent for its existing residents. Sandhill Acres did not show that.

The Arbitrator's decision was reversed.

LEGISLATION

California

Violations - Cannabis

2017 CA A 2164. Enacted 9/10/2018. Effective 1/1/2019.

This bill amends Cal. Gov't Code § 53069.4 to allow a local ordinance to provide for the immediate imposition of

administrative fines or penalties for the violation of building, plumbing, electrical, or other similar structural, health and safety, or zoning requirements if the violation exists as a result of, or to facilitate, the illegal cultivation of cannabis, unless all of the following are true:

(i) A tenant is in possession of the property that is the subject of the administrative action.

(ii) The rental property owner or agent can provide evidence that the rental or lease agreement prohibits the cultivation of cannabis.

(iii) The rental property owner or agent did not know the tenant was illegally cultivating cannabis and no complaint, property inspection, or other information caused the rental property owner or agent to have actual notice of the illegal cannabis cultivation.

LEGISLATION
California
Military service – Leases

2017 CA A 3212. Enacted 9/19/2018. Effective 1/1/2019.

This bill amends Cal. Mil. & Vet. Code § 406 to provide that no eviction or distress shall be made during the period of military service specified in Section 400, until 120 (formerly, 30) days after the service member is released from active service or duty if the premises are occupied primarily for dwelling purposes by the spouse, children, or other dependents of a service member, except upon leave of court granted upon application therefor or granted in an action or proceeding affecting the right of possession.

The bill amends Cal. Mil. & Vet. Code § 409 to provide that the lessee on a lease may, at the lessee's option, terminate the lease at any time after the lessee's entry into military service, or the date of the lessee's military orders. A lessee's termination of a lease pursuant to this subdivision shall terminate any obligation a dependent of the lessee has under the lease.

This applies to a lease of premises occupied, or intended to be occupied, by a service member or a service member's dependents for a residential, professional, business, agricultural, or similar purpose if the lease is executed by or on behalf of a person who does either of the following:

(A) During the term of the lease, enters a period of military service.

(B) While in a period of military service, executes the lease and then receives military orders for a permanent change of station or to deploy with a military unit, or as an individual in support of a military operation, for a period of not less than 90 days.

In the case of a lease that provides for monthly payment of rent, termination of the lease is effective 30 days after the first date on which the next rental payment is due and payable after the date on which the required notice is delivered.

Rents or lease amounts paid in advance for a period after the effective date of the termination of the lease shall be refunded to the lessee by the lessor, or the lessor's assignee or the assignee's agent, within 30 days of the effective date of the termination of the lease.

Upon application by the lessor to a court before the termination date provided in the written notice, relief granted by this section to a service member may be modified as justice and equity require.

LEGISLATION
California
Emergencies – Rent increases

2017 CA A 1919. Enacted 9/21/2018. Effective 1/1/2019.

This bill adds Cal. Gov't Code § 8588.8 to provide that, upon the proclamation of a state of emergency declared by the Governor, the Office of Emergency Services shall include, on an appropriate Internet Web site, information

for property owners about the effect of the proclamation on rental price.

The bill amends Cal. Penal Code § 396 to make it a misdemeanor, upon the proclamation or declaration of an emergency, for a person, business, or other entity to increase the rental price, as defined, advertised, offered, or charged for housing to an existing or prospective tenant by more than 10% for any period that the proclamation or declaration is extended.

The bill additionally makes it a misdemeanor for a person, business, or entity to evict a housing tenant after the proclamation of a state of emergency and then rent or offer to rent to another person at a rental price higher than the evicted tenant could be charged.

LEGISLATION
California
Rehabilitation - Loans

2017 CA A 2056. Enacted 9/26/2018. Effective 1/1/2019.

This bill amends Cal. Health & Safety Code §§ 50784.5 and 50784.7 and adds Cal. Health & Safety Code § 50784.6.

The bill authorizes the Department of Housing and Community Development to make loans to a qualified nonprofit housing sponsor or a local public entity to acquire or rehabilitate a mobilehome park where no less than 30% of residents at the time that the loan application is filed are low income. The bill also authorizes the department to make loans or grants to a resident organization, nonprofit housing sponsor, or public local entity to assist park residents with needed repairs or accessibility upgrades.

The bill also authorizes the Department to make development loans to a qualified nonprofit housing sponsor, resident organization, or local public entity for the development of a new mobilehome park to replace a mobilehome park that has been destroyed by a natural disaster and is located within 20 miles of the destroyed mobilehome park.

LEGISLATION
California
Complaints

2017 CA A 3066. Enacted 9/26/2018. Effective 1/1/2019.

This bill amends Cal. Health & Safety Code §§ 18021.7 and 18502 and adds Part 2.2 to Division 13 of Cal. Health & Safety Code, §§18800 – 18806, to enact the Mobilehome Residency Law Protection Act, to be repealed as of 1/1/2024.

Beginning July 1, 2020, the bill establishes the Mobilehome Residency Law Protection Program within the Department of Housing and Community Development, pursuant to which the department will provide assistance in resolving and coordinating the resolution of complaints from homeowners relating to the Mobilehome Residency Law.

If a complaint is not resolved during a 25-day period for negotiation, the bill requires the referral of complaints selected for evaluation to an appropriate enforcement agency.

The bill requires management to provide specified information to the Department within 15 business days from the postmark date or electronic transmission of a request for that information and imposes a noncompliance citation of $250 for each failure to comply.

Beginning January 1, 2019, the bill requires the Department to assess upon, and collect from, the management of a mobilehome park an annual registration fee of $10 for each permitted mobilehome lot located within the mobilehome park. The bill authorizes management to pass this fee on to the homeowners within the mobilehome park.

The bill requires the Department to report information to a task force to provide input to the Department on the conduct and operation of a mobilehome park maintenance inspection program.

LEGISLATION
California
Inspections

2017 CA S 46. Enacted 9/27/2018. Effective 1/1/2019.

This bill amends the Mobilehome Parks Act, Cal. Health & Safety Code §§ 18400.1, 18424, and 18502, to extend the repeal of provisions requiring the inspection of mobilehome parks and provisions requiring an enforcement agency to issue notices to correct a violation and provides procedures for owners or operators to dispute and appeal violation notices.

Existing law repeals these provisions on January 1, 2019. This bill extends the repeal date of these provisions to January 1, 2024.

The bill similarly extends the repeal date of provision imposing a fee of $4 per lot to be used exclusively for the inspection of mobilehome parks and mobilehomes to determine compliance with the act, from 1/1/2019 to 1/1/2024.

LEGISLATION
California
Water service termination

2017 CA S 998. Enacted 9/28/2018. Effective 1/1/2019.

This bill adds Cal. Health & Safety Code §§ 116900 – 116926.

The bill requires an urban and community water system, defined as a public water system that supplies water to more than 200 service connections, that furnishes individually metered residential service to residential occupants of a mobilehome park where the owner, manager, or operator of the park is the customer of record, to make every good faith effort to inform the residential occupants by written notice that service will be terminated and that the residential occupants have the right to become customers.

LEGISLATION
California
Mobilehome Assistance Center

2017 CA S 1078. Enacted 9/30/2018. Effective 1/1/2019.

The bill amends Cal. Civ. Code § 798.29 and Cal. Health & Safety Code §§ 18150 – 18153.5 by replacing references to the Mobilehome Ombudsman with the Mobilehome Assistance Center.

A mobilehome park is required to post a sign in large boldface print, with the name, address, and telephone number of the Mobilehome Assistance Center.

The Mobilehome Assistance Center provides assistance in taking complaints, and helping to resolve and coordinate the resolution of those complaints, from the public relating to manufactured homes and mobilehomes.

PRESS RELEASE
Nebraska
SCRA

The Justice Department announced that Twin Creek Apartments, LLC, owner of an apartment complex in Bellevue, Nebraska, adjacent to the Offutt Air Force Base, agreed to a settlement to resolve allegations that it violated the Servicemembers Civil Relief Act (SCRA) by imposing lease termination charges against 65 servicemembers who had exercised their federal right to terminate their residential leases. The charges ranged from $72 to $1,498 per servicemember.

SCRA provides certain protections to servicemembers who must terminate their residential leases in order to comply with military orders for a permanent change of station, deployment, or retirement. Under the terms of the settlement, Twin Creek must pay a total of $76,516 in damages to the 65 identified servicemembers. Under the agreement, Twin Creek will also pay a civil penalty of $20,000 to the United States. The settlement also prohibits Twin Creek from engaging in future violations of SCRA.

SETTLEMENT AGREEMENT
Department of Justice
SCRA

United States v. United Communities, LLC.

The Civil Action alleged that UC engaged in a pattern or practice of violating the Servicemembers Civil Relief Act by imposing early termination charges against certain groups of servicemembers who terminated their residential leases in compliance with SCRA. Specifically, the United States alleged that UC enforced a Lease Incentive Addendum that required servicemembers to pay UC an amount equal to the lease incentive the servicemember received at move-in if the servicemember terminated the lease: (1) for any reason other than a permanent change of station, separation or retirement (for example, a servicemember would have to pay the termination charge even if he or she received SCRA-qualifying deployment orders); or (2) within six months of signing the lease, for any reason at all (including those events protected by SCRA, such as permanent change of station, separation, retirement, or qualifying deployment orders).

Under the settlement agreement, UC, will develop SCRA Policies and Procedures for Lease Terminations.

UC will also compensate servicemembers affected by its policies and request that all credit bureaus to which it reports remove negative entries for the servicemember(s) and any co-lessee(s) attributable to non-payment of any amounts that were due and unpaid at the time of lease termination that would not have been considered unpaid if the early termination charge had not been applied to the account.

UC will also pay a total of $17,500 as a civil penalty.

PRESS RELEASE
HUD
Discrimination

HUD announced that it is charging a New Orleans landlord with housing discrimination for publishing an advertisement that discriminated against families with children. The ad included language that stated, “No Teenagers Please.”

HUD noted in its release that the Fair Housing Act “makes it unlawful to deny or limit housing because a family has children under the age of 18 and to make statements that discriminate against families with children. This includes publishing print, broadcast or internet advertisements that indicate a preference or otherwise discriminate against families with children. Housing may exclude children only if it meets the Fair Housing Act’s exemption for housing for older persons.”

DATA PRIVACY

LEGISLATION
California
Consumer Privacy Act

2017 CA S 1121. Enacted 9/23/2018. Effective immediately (however, the provisions are operative on January 1, 2020).

This bill amends the California Consumer Privacy Act of 2018.

The bill requires a business that collects personal information about a consumer to disclose the consumer's right to delete personal information in a form that is

reasonably accessible to consumers and in accordance with a specified process.

The bill provides that the rights afforded to consumers and the obligations imposed on any business under the act do not apply if those rights or obligations would infringe on the noncommercial activities of people and entities described in a specified provision of the California Constitution addressing activities related to newspapers and periodicals.

The bill also prohibits application of the act to personal information collected, processed, sold, or disclosed pursuant to a specified federal law relating to banks, brokerages, insurance companies, and credit reporting agencies, among others, and also excepts application of the act to that information pursuant to the California Financial Information Privacy Act. The bill provides that these exceptions, and the exception provided to information collected, processed, sold, or disclosed pursuant to the Driver' s Privacy Protection Act of 1994, do not apply to specific provisions of the act related to unauthorized theft and disclosure of information. The bill also clarifies that the act does not apply if it is in conflict with the United States Constitution.

This bill clarifies that the only private right of action permitted under the act is the private right of action for violations of unauthorized access and exfiltration, theft, or disclosure of a consumer' s nonencrypted or nonredacted personal information and deletes the requirement that a consumer bringing a private right of action notify the Attorney General.

The bill removes references to laws relating to unfair competition in connection with Attorney General actions described above. The bill limits the civil penalty to be assessed in an Attorney General action in this context to not more than $2,500 per violation or $7,500 per each intentional violation and specifies that an injunction is also available as remedy.

DEFAULT SERVICING

CASE LAW

Bankruptcy - Bifurcation

CASE NAME: *In re Jones*
DATE: *04/20/2018*
CITATION: *United States Bankruptcy Court, W.D. Washington, at Seattle. 583 B.R. 749. 95 UCC Rep.Serv.2d 871*

The Debtor entered into a Retail Installment Sale Contract with West Hills Ford Mazda for the purchase of a used 2015 Dodge Ram 2500. The Sale Contract stated the "Total Cash Sale Price" of the Vehicle was $56,589.12. The Sale Contract included additional charges for an "Optional Gap Contract" in the amount of $795.00, a "National Premium Maintenance" contract in the amount of $2,653.00, and a "VIP Maintenance" contract in the amount of $498.00 (collectively, the "Option Contracts"). After taxes, license, and fees, the amount financed totaled $61,061.76. The Sale Contract provided the Debtor was conveying a purchase money security interest in the Vehicle. The dealer assigned its interest in the Sale Contract to Kitsap Credit Union.

Less than 910 days after incurring the debt, the Debtor filed chapter 13. Prior to filing, the Debtor paid a total of $2,831.57 on the obligation. Kitsap filed a proof of claim, asserting a secured claim of $58,230.19.

The Debtor objected to Kitsap's claim, arguing the claim was not secured to the extent of money advanced for the purchase of the Option Contracts. Relying on *In re Penrod, 611 F.3d 1158 (9th Cir. 2010)*, the Debtor argued the claim should be bifurcated and allowed as a secured claim only as to the amounts required to purchase the Vehicle.

According to the Court, in *Penrod*, the creditor asserted that it held a PMSI in the "negative equity" attributable to the debtor's trade-in. The Ninth Circuit ruled the creditor did not possess a security interest in the sums advanced to pay the negative equity. The *Penrod* court explicitly

stated the "key issue of [the] appeal" was "the meaning of 'price' for the purposes of the purchase money security interest."

The Court found the Option Contracts were not part of the "price" of the Vehicle secured by the PMSI. Like negative equity, the Option Contracts were not sufficiently related to the purchase of the Vehicle. Neither the purchase of optional gap insurance or maintenance contracts were akin to sales tax and license fees, which were not optional but were required in order to obtain the vehicle. Simply including the Option Contracts in the Sale Contract did not create a sufficient nexus between the acquisition of the collateral and the secured obligation to transform the Option Contracts into part of the price of the Vehicle. Rather, these were multiple financial transactions memorialized on a single retail installment sale document.

Likewise, the Option Contracts were not part of the value given to enable the Debtor to acquire rights in the vehicle. While it may be true the Option Contracts added value to the collateral, the contracts were entirely optional; thus, purchase of these items did not enable the sale.

Finally, the Court applied the "dual status rule," which allows part of a loan to have purchase money status, while the remainder is secured by a regular security interest, rather than the "transformation rule" which provides that "when a transaction contains both purchase money and non-purchase money obligations, the entire transaction is transformed into a non-purchase money obligation." The Court determined the pro rata allocation of prepetition payments by subtracting the amount found to be unsecured from the amount financed under the original contract, applying the percentage of this balance compared to the total amount financed, and then using that percentage to allocate prepetition payments between the secured and unsecured portions.

Objection to the claim of Kitsap Credit Union was sustained, and the claim allowed as a secured claim in the amount of $54,468.52, and as a general unsecured claim in the amount of $3,761.67.

CASE LAW

Wrongful foreclosure – Damages

CASE NAME: *McGinnis v. American Home Mortgage Servicing, Inc.*
DATE: *08/22/2018*
CITATION: *United States Court of Appeals, Eleventh Circuit. --- F.3d ----. 2018 WL 4001634*

McGinnis owned numerous residential rental properties that served as her nest egg. McGinnis refinanced seven of her properties. American Home Mortgage Servicing, now known as Homeward, obtained the rights to service McGinnis's loans and increased her monthly payment for one property from $605.58, including $490.13 for principal and interest and $115.45 for the escrow deposit, to $843.58, including $490.13 for principal and interest and $353.45 for the escrow deposit. No explanation was given for the high percentage increase in the escrow deposit. McGinnis disputed the increase and continued her original payments.

Homeward treated the payments as partial, and held the funds in a suspense account until there were enough funds to pay off the oldest past-due monthly payment. The interest and late fees continued to mount and Homeward frequently contacted McGinnis demanding payment.

Homeward subsequently returned McGinnis's payments and foreclosed.

McGinnis filed suit asserting claims of (1) wrongful foreclosure, (2) violation of RESPA, (3) intentional infliction of emotional distress, (4) conversion, (5) tortious interference with property rights, (6) defamation, and (7) violation of Georgia's RICO Act. McGinnis sought punitive damages. The district court granted summary judgment for Homeward on the RESPA, defamation, and Georgia RICO Act claims, but a jury found for McGinnis on all of her remaining claims, awarding $6,000 in economic damages and $500,000 in emotional distress damages. The jury found that Homeward acted with the specific intent to

cause McGinnis harm and awarded $3,000,000 in punitive damages. Homeward appealed.

The Court found a high degree of reprehensibility in Homeward's conduct. First, Homeward's conduct caused McGinnis physical and emotional harm in addition to economic harm. Second, Homeward's conduct evinced an indifference to McGinnis's health. Third, Homeward knew that McGinnis was financially vulnerable. Fourth, Homeward's conduct involved repeated actions rather than an isolated event. Fifth, Homeward's conduct went well beyond a calculation error. Homeward's failure to explain, even at trial, how it arrived at the payment amount spoke volumes about its conduct. Homeward had numerous opportunities to correct any error but failed to do so.

Homeward's placement of McGinnis's monthly payments in a suspense account, rather than crediting those payments to her account, allowed it to collect fees and expenses that Homeward knew McGinnis did not owe.

The Court also found that the ratio of punitive damages to compensatory damages awarded by the jury in this case—5.9:1—was not unconstitutionally excessive.

The Court agreed with the lower court that it was not against the weight of the evidence for the jury to conclude that Homeward knew its conduct was substantially certain to cause McGinnis emotional harm from four pieces of evidence: Homeward's awareness of its error and refusal to retract its demands; Homeward's use of the suspense account; Homeward's knowledge of the emotional harm suffered by McGinnis; and Homeward's offer to avoid foreclosure, where she would have had to give in to all of Homeward's existing demands, including by paying the unexplained monthly payment amount as well as all of the late fees and penalties.

The Court noted that, at trial, Homeward's only witness maintained that McGinnis was obligated to pay any amount Homeward demanded whether reasonable or in error. Homeward continued to send demands and threaten foreclosure even though it knew that those demands were unreasonable and that its actions were causing McGinnis harm. At the same time, Homeward used a suspense account to collect even more money to which it was not entitled by way of fees and expenses. The egregious actions in this case were not typical and not likely to make a substantial punitive damages award available in every foreclosure action wrongful or not.

Affirmed.

CASE LAW

Foreclosure - Surplus

CASE NAME: *Bank of New York Mellon v. Glenville*
DATE: *09/06/2018*
CITATION: *Supreme Court of Florida. --- So.3d ----. 2018 WL 4327881*

Diane and Mark Glenville, were the defendant property owners in a foreclosure action. The Bank of New York Mellon was the holder of a second mortgage on the property. A first mortgage on the property was held by JP Morgan Chase, and a third mortgage on the property was held by Florida Housing Finance Corporation.

JP Morgan Chase brought a foreclosure action against the Glenvilles. A Final Judgment of Foreclosure was entered, setting a public auction date. The public auction was held on July 2, 2015. The clerk issued the certificate of sale on July 6, 2015, after the holiday weekend. On July 14, 2015, the clerk issued the certificate of title. And on July 29, 2015, the clerk issued the certificate of disbursements. The certificate of disbursements reflected a surplus of $86,093.27.

On August 4, 2015, Florida Housing filed a claim asserting its right to $20,573.64 of the surplus amount. On September 1, 2015—sixty-one days after the public auction—the Glenvilles filed a Verified Claim for Mortgage Foreclosure Surplus. The Glenvilles admitted that Florida Housing's claim was timely and requested that the trial court issue an order disbursing $20,573.64 of the surplus

to Florida Housing and the remainder to the Glenvilles. On September 2, 2015, Mellon filed a claim asserting its right to the entire surplus amount. Mellon's claim was filed more than sixty days after the public auction but within sixty days of the clerk's filing of each of the following: the certificate of sale, the certificate of title, and the certificate of disbursements.

The trial court issued an Order to Disburse Surplus Funds, directing the clerk to disburse $20,573.64 of the surplus to Florida Housing, and the balance to the Glenvilles, rejecting Mellon's claim as untimely. Mellon appealed to the Second District, arguing "that a foreclosure sale is not complete until the clerk issues the certificate of sale."

The Second District affirmed. The Second District also rejected a separate argument from Mellon that the sixty-day period should begin from the day the clerk issues the certificate of title.

On further appeal., the Supreme Court of Florida found that Fla. Stat. § 45.032(1)(c) specifically defines the term "surplus" to mean "the funds remaining after payment of all disbursements required by the final judgment of foreclosure and shown on the certificate of disbursements."

Section 45.032(3) then references a very specific sixty-day period: "During the 60 days after the clerk issues a certificate of disbursements, the clerk shall hold the surplus pending a court order." Each of the three paragraphs in subsection (3) go on to reference this sixty-day period in the specific context of the filing of claims for surplus funds.

The Court held that sixty-day limitations period governing claim for surplus funds following judicial foreclosure sale began to run from the date the clerk issued the certificate of disbursements, not from date of sale or date that the clerk issued the certificate of title.

Decision of District Court of Appeal quashed.

CASE LAW

Foreclosure – Property services

CASE NAME: *Day v. Wilmington Savings Fund Society FSB*
DATE: *09/18/2018*
CITATION: *United States District Court, M.D. Pennsylvania. Slip Copy. 2018 WL 4469326*

Wells initiated a mortgage action against the plaintiff. During a court-ordered mediation process, the plaintiff's mortgage was transferred to WSFS as trustee, a fact that Carrington Home Mortgage Services, LLC ("CMS") communicated to the plaintiff, also advising that her loan would be serviced by CMS. As a result of the mediation, the plaintiff was offered and completed a trial mortgage modification.

On February 8, 2017, Wells's legal counsel notified the plaintiff's attorney that the new servicer, CMS, would "... generate the final mod docs."

On March 1, 2017, the plaintiff returned home to find stickers stating that the home was abandoned affixed to her door by Carrington Home Solutions, L.P. ("CHS"). The plaintiff notified CHS that her Property was not abandoned and that CMS had granted her a loan modification. CHS assured the plaintiff that the stickers would be removed.

Five days later, the plaintiff received notice from her home security company that her home alarm had been set off. The plaintiff's locks had been changed and she could not enter her Property for approximately one month, when she discovered a destroyed alarm panel, disconnected appliances including electrical and water, and severe water damage.

On May 26, 2017, CMS sent to the plaintiff a fully executed copy of the loan modification.

The plaintiff filed suit alleging 7 causes of action: Trespass, against WSFS, CMS, and CHS; Negligence, against WSFS,

CMS, and CHS; Invasion of Privacy—Intrusion Upon Seclusion, against WSFS, CMS, and CHS; Intentional Infliction of Emotional Distress ("IIED"), against WSFS, CMS, and CHS; Negligent Infliction of Emotional Distress ("NIED"), against WSFS, CMS, and CHS; Violations of the Fair Credit Extension Uniformity Act ("FCEUA") and the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTPCPL"), against WSFS and CMS; Violations of the FDCPA.

CHS moved to dismiss the plaintiff's IIED, NIED, and Punitive Damages claims, averring that by signing the Mortgage, the plaintiff consented to the securing of the property upon her failure to make her monthly payments under the mortgage.

Noting that, under Pennsylvania law, for a claim of IIED: (1) the conduct [of the defendant] must be extreme and outrageous; (2) it must be intentional or reckless; (3) it must cause emotional distress; and (4) that distress must be severe, the Court found that the plaintiff pled enough facts to justify moving the plaintiff's IIED claim beyond the pleadings stage.

The Court also found that the plaintiff's claim that CHS's conduct caused her to experience extreme fear and anxiety, loss of sleep, focus, nausea, and depression articulated a lasting physical and emotional effect, which could constitute a physical impact for purposes of NIED.

Further, according to the Court, that CHS acted with reckless indifference to the property rights of the plaintiff was plausible and gave CHS fair notice of the plaintiff's Punitive Damages claim.

CMS and WSFS moved to dismiss the FCEUA and UTPCPL claims on the basis that the plaintiff failed to plead that she justifiably relied on the defendants and suffered an ascertainable loss therefrom.

Because the plaintiff relied on the mortgage modification terms, she did not anticipate the defendant entering her home without permission. The plaintiff alleged that the defendants' actions caused her to suffer ascertainable losses. As a result, the Court found that the plaintiff pleaded sufficient facts showing ascertainable loss and justifiable reliance. The Court denied the defendants' motion to dismiss regarding the plaintiff's FCEUA and UTPCPL claims.

However, the Court found that WSFS was not a debt collector for purposes of the FDCPA.

First, WSFS was the owner of the Mortgage and therefore was a creditor and not a debt collector under the FDCPA. Second, WSFS was not a debt collector because it was not "in any business the principal purpose of which is the collection of any debts." Third, the plaintiff failed to plead any facts alleging that WSFS used a name other than its own to collect the mortgage debt. Therefore, the Court dismissed the plaintiff's FDCPA claim against WSFS.

CASE LAW

TCPA – ATDS

CASE NAME: *Marks v. Crunch San Diego, LLC*
DATE: *09/20/2018*
CITATION: *United States Court of Appeals, Ninth Circuit. --- F.3d ----. 2018 WL 4495553*

Marks appealed the grant of summary judgment to Crunch Fitness on his claim that three text messages he received from Crunch violated the Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227. The district court held that the automatic text messaging system that had sent the messages was not an automatic telephone dialing system (ATDS) under the TCPA, because it lacked the present or potential capacity "to store or produce telephone numbers to be called, using a random or sequential number generator." In light of the D.C. Circuit's recent opinion in *ACA Int'l v. Fed. Commc'n Comm'n, 885 F.3d 687 (D.C. Cir. 2018)* (which was decided after the district court ruled), and based on its own review of the TCPA, the appeals court concluded that the statutory definition of ATDS includes a device that stores telephone numbers to be called, whether or not those numbers have

been generated by a random or sequential number generator.

Reversed.

CASE LAW
TCPA – ATDS

CASE NAME: *Glasser v. Hilton Grand Vacations Company, LLC*
DATE: *09/24/2018*
CITATION: *United States District Court, M.D. Florida. Slip Copy. 2018 WL 4565751*

Plaintiff alleged that Hilton Grand Vacations Company, LLC used an automated telephone dialing system ("ATDS") to make telemarketing calls to her cell phone without her consent.

Defendant contended that it was entitled to summary judgment because the technology it used to call Plaintiff's cell phone, the Intelligent Mobile Connect System ("IMC System"), required human intervention before a call could be made. Defendant maintained that before a call could be made, a customer's record, including, the customer's cell number, appeared on the agent's computer screen, and the agent then clicked on the "Make Call" button on the screen to initiate the call. Plaintiff countered that although Defendant's agents clicked on the "Make Call" button to initiate a call, that only placed the number in a queue to be called, and a computer actually dialed the number. According to Plaintiff, human intervention was therefore not required to dial the number.

Referring to *ACA Int'l v. Fed. Commc'n Comm'n, 885 F.3d 687, 691-92 (D.C. Cir. 2018)*, the Court found that nothing in the record demonstrated that Defendant's IMC System generated numbers and then called them. Human intervention was required before a phone call could be placed by Defendant's IMC System. Indeed, Defendant's "manual dialing marketing agents" were integral to initiating each phone call.

ACA Int'l makes it clear that an autodialer must both generate the numbers and dial them. Since it was undisputed that calls could not be made unless an agent clicked on the screen and forwarded a telephone number to the server to be called, Defendant's "point-to-click" system did not constitute an autodialer system under the TCPA.

Defendant's Motion for Summary Judgment granted.

CASE LAW
FDCPA – Form 1099-C

CASE NAME: *Schultz v. Midland Credit Management, Inc.*
DATE: *09/24/2018*
CITATION: *United States Court of Appeals, Third Circuit. --- F.3d ----. 2018 WL 4558595*

Midland sent letters to Robert Schultz, Jr., attempting to collect three separate outstanding debts. Midland sent Donna Schultz separate letters likewise attempting to collect a separate outstanding debt from her. None of the Schultzs' debts exceeded $600. Each letter offered to settle the amount of indebtedness for less than the full amount owing. All of the letters contained the following language: "We are not obligated to renew this offer. We will report forgiveness of debt as required by IRS regulations. Reporting is not required every time a debt is canceled or settled, and might not be required in your case." Since the Department of the Treasury only requires an entity or organization to report a discharge of indebtedness of $600 or more to the IRS, the Schultzes claimed that the inclusion of the foregoing language was "false, deceptive and misleading" in violation of the FDCPA.

The Schultzes filed a putative class action asserting violations of the FDCPA. Midland moved to dismiss. The District Court granted Midland's motion, concluding that the language set forth in the dunning letters was not "deceptive" or "otherwise violative of the FDCPA." In the District Court's view, the language simply stated that, in

certain circumstances, debt settlement and/or discharge may be reportable to the IRS, not all settlements and/or discharges are reportable, and that the subject statement may not be applicable to the reader. The Schultzes appealed.

The appeals court found that, by including the language, "[w]e will report forgiveness of debt as required by IRS regulations," Midland presented a false or misleading view of the law—one designed to scare or intimidate the Schultzes into paying the outstanding debts listed on the debt collection letters even though Midland knew that any discharge of the Schultzes' debt would not result in a report to the IRS because IRS regulations clearly state that only discharges of debt of $600 or more "must" be included on a Form 1099-C and filed with the IRS. By including the reporting language on collection letters addressing debts of less than $600, the Court found that the least sophisticated debtor might be persuaded into thinking that the discharge of any portion of their debt, regardless of amount discharged, could be reportable, even with the qualifying statement. Even if the language in a letter is true, it can still be deceptive where it can be reasonably read to have two or more different meanings, one of which is inaccurate.

Reversed and remanded.

CASE LAW

TCPA – Class certification

CASE NAME: *Tomeo v. CitiGroup, Inc.*
DATE: *09/27/2018*
CITATION: *United States District Court, N.D. Illinois, Eastern Division. Slip Copy. 2018 WL 4627386*

Plaintiffs brought a class action complaint against CitiGroup, Inc. and CitiMortgage, Inc., asserting that Citi violated the TCPA by calling their telephones using an automatic telephone dialing system ("ATDS") without their express consent. Tomeo sought to pursue the action not only individually but also on behalf of the two following classes:

Cease and Desist Class: where Citi's business records indicate the person requested not to be called.

Wrong Number Class: where Citi's business records indicate that Citi was told that it had called the wrong number.

According to the Court, in its capacity as a loan servicer, Citi had various policies in place to ensure that it only reached out to individuals who consented to receive contact. If an accountholder asked Citi to stop contacting a specific number, then Citi's policies instructed its representative to add a "Do Not Call" flag to that phone number. If the accountholder requested that Citi stop all communication, Citi's policies provided that its representative place a "Cease and Desist" flag on that person's account. If the request was not in writing, for accountholders in states where requests to stop calling landlines must be in writing, Citi then opened a "Case 998" investigation to assess consent and request that the accountholder confirm in writing that the accountholder no longer consented to contact. Finally, if, in the process of attempting to reach an accountholder, Citi contacted the wrong number, then Citi's policies instructed its representative to flag that phone number as "WRNG." When an account had any one of these flags engaged, Citi's autodialing system should not contact the phone number/account at issue.

Tomeo's case rested upon his assertion that Citi used autodialers to contact phone numbers after having been asked to stop calling those numbers or told that those numbers were the wrong number.

The Court found that the issue of whether Citi had consent to contact an individual required a specific investigation of each account. Accountholders typically pendulate back and forth between withdrawing consent and re-consenting to contact, and so the mere fact that an account had a Do Not Call or Cease and Desist flag at one point in time did not establish a lack of consent in the

future. Similarly, accountholders frequently told Citi's representative that Citi had contacted the wrong number in order to avoid speaking to Citi, and then later contacted Citi using the same number. According to Citi's experts, the only way to determine whether an individual consented to calls would be to individually review each of the accounts, including the Individual Note Screens.

Because the Court found that common issues of fact did not predominate over the questions affecting individual members, the Court denied certification of the Rule 23(b)(3) classes.

LEGISLATION
California
Tax sale - Redemption

2017 CA A 2746. Enacted 9/6/2018. Effective 1/1/2019.

This bill amends Cal. Rev. & Tax Code § 3707 to specify that the commencement of a property tax sale constitutes the actual sale date, regardless of the date of the conclusion of the auction.

The bill provides that the taxpayer loses all rights in the property during the auction period for failure to redeem the property by the final redemption date and that if a property has not been redeemed, any person or entity with title of record to the property loses all rights in the property, including all legal and equitable interest therein, upon close of the redemption period. However, those rights return if the right of redemption is revived.

The bill specifies that the provisions relating to the right of redemption do not affect the distribution of proceeds, as specified, and apply regardless of whether the tax collector or his or her designee conducts the tax sale in person.

LEGISLATION
California
Foreclosure

2017 CA S 818. Enacted 9/14/2018. Effective 1/1/2019.

This bill repeals Cal. Civ. Code § 2920.5, amends Cal. Civ. Code §§ 2923.5; 2923.6; 2923.7; 2924; 2924.11; 2924.12; 2924.15; 2924.17 and adds Cal. Civ. Code §§ 2923.55; 2924.9; 2924.10; 2924.18; 2924.19.

With regard to first lien mortgages or deeds of trust on residential real property, the bill prohibits an entity that forecloses on more than 175 real properties from recording a notice of default or notice of sale, or conducting a trustee' s sale after a borrower submits a complete application for a first lien loan modification and that application is pending. The bill requires that the complete application be submitted at least 5 business days before a scheduled foreclosure sale. The prohibition on recording a notice of default or a notice of sale continues until one of 3 specified events occur. The bill grants a borrower 30 days to appeal if the loan modification is denied. During this appeal period, the bill prohibits filing a notice of default, or if that notice has already been filed, recording a notice of sale or conducting a trustee' s sale until the later of specified events. The bill requires a mortgage servicer to send a written notice to the borrower that identifies the reasons for denial and that includes certain information in connection with the denial. The bill provides that a mortgage servicer satisfies specified telephone contact requirements if the borrower makes a written request to cease communications.

This bill also prohibits these entities from recording a notice of default until a mortgage servicer provides the borrower specified information in writing, 30 days have passed after contacting the borrower or after making diligent effort, as specified, to do so, and after compliance by the mortgage servicer with the requirements for completed applications for loan modification described above, as may be applicable. The bill requires that a notice

of default include a specified declaration regarding contact with a borrower.

The bill also requires a mortgage servicer that offers a foreclosure prevention alternative to send a written communication containing specified information regarding the alternative to a borrower within 5 days after recording a notice of default, except as specified. The bill requires a mortgage servicer to provide a borrower who submits a complete first lien loan modification application, or any document connected to that modification, written acknowledgment of receipt within 5 business days of receipt along with other information regarding the loan modification process. The bill defines "complete" for these purposes. The bill prohibits recording a notice of default if a foreclosure prevention alternative is approved in writing before the notice is recorded and other specified conditions are met. If a foreclosure prevention alternative is approved after recording the notice, the bill prohibits recording a notice of sale or conducting a trustee sale if specified conditions are met. The bill requires that a notice of default be rescinded or a pending trustee sale canceled when a borrower executes a permanent foreclosure alternative. The bill prohibits a mortgage servicer from charging fees for a first lien loan modification or other foreclosure prevention alternative, as specified, and requires modifications and prevention alternatives previously approved to be honored following transfer or sale to another servicer.

With regard to first lien mortgages or deeds of trust on residential real property in connection with an entity that forecloses on fewer than 175 real properties in a reporting period, the bill prohibits recording a notice of default, notice of sale, or conducting a trustee's sale while a complete first lien loan modification application is pending and until the mortgage servicer provides the borrower a written determination regarding his or her eligibility for the requested modification. The bill requires that the complete application be submitted at least 5 business days before a scheduled foreclosure sale. The bill prohibits recording a notice of default if a foreclosure prevention alternative is approved in writing before the notice is recorded and other specified conditions are met. If a foreclosure prevention alternative is approved after recording the notice, the bill prohibits recording a notice of sale or conducting a trustee sale if specified conditions are met. The bill prescribes a process by which these entities become subject to the provisions described above that are applicable to entities that foreclose on more than 175 real properties. The bill requires modifications and prevention alternatives previously approved to be honored following transfer or sale to another servicer. The bill authorizes a borrower to seek injunctive relief to enjoin material violations of certain of its provisions if a trustee' s deed upon sale has not been recorded.

PRESS RELEASE
DOJ
SCRA – Foreclosure

Issued 9/27/2018.

The Justice Department reached a settlement with Northwest Trustee Services of Bellevue, Washington, for illegally foreclosing on servicemembers' homes.

The complaint, filed in November 2017, alleged that Northwest foreclosed on homes owned by servicemembers without obtaining the required court orders.

The Department of Justice launched an investigation into Northwest's practices after United States Marine Corps veteran Jacob McGreevey of Vancouver, Washington submitted a complaint to the Department's Servicemembers and Veterans Initiative in May 2016. Northwest had foreclosed on Mr. McGreevey's home in August 2010, less than two months after he was released from active duty in Operation Iraqi Freedom. McGreevey sued both PHH Mortgage (his mortgage servicer) and Northwest in 2016, but a U.S. District Court Judge accepted PHH and Northwest's argument that McGreevy

had waited too long to file his complaint and dismissed the case. The Department's investigation revealed that, in addition to McGreevey, Northwest had unlawfully foreclosed on other SCRA-protected servicemembers since 2010.

FEDERAL REGULATION

PRESS RELEASE
OCC
Supervisory guidance

Issued 9/11/2018.

Five federal agencies issued a joint statement explaining the role of supervisory guidance for regulated institutions.

The statement from the agencies—the Federal Reserve Board, the Bureau of Consumer Financial Protection, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Office of the Comptroller of the Currency—confirmed that supervisory guidance does not have the force and effect of law, and the agencies do not take enforcement actions based on supervisory guidance.

The joint statement explained that supervisory guidance can outline the agencies' supervisory expectations or priorities and articulate the agencies' general views regarding appropriate practices for a given subject area.

BLOG
CFPB
Fintech - Sandbox

Posted 9/13/2018.

The CFPB's Office of Innovation proposed a "Disclosure Sandbox" for fintech companies to test new ways to inform consumers.

The Office proposed the creation of a Disclosure Sandbox through revisions to the Bureau's existing policy to encourage trial disclosure programs. The existing policy was established in 2013, although the Bureau has not approved any trial disclosures. The revised policy is based on the same statutory authority as the existing policy, which allows the Bureau to deem a covered person conducting a trial disclosure program to be in compliance with or exempt from a requirement of a Bureau rule or certain federal laws.

The proposed policy includes a number of revisions designed to more effectively encourage companies to test new disclosures:

Streamlining the application and review process to focus on the quality and persuasiveness of the application

Granting or denying applications within 60 days of submission

Establishing an expected two-year time frame for the testing of disclosures

Specifying procedures for permitting companies to continue to use disclosures that test successfully

Coordinating with state regulators so that entities within state "regulatory sandboxes" may be able to participate in the Bureau's Disclosure Sandbox without applying separately to the Bureau.

PRESS RELEASE
FHFA
Duty to serve

Issued 10/3/2018.

FHFA Requests Public Input on Fannie Mae and Freddie Mac's Proposed Duty to Serve Plan Modifications.

The Duty to Serve regulation allows an Enterprise to request to modify its Plan at any time. However, FHFA must provide a non-objection to a proposed modification for them to become part of an Enterprise's Plan. FHFA has

determined that public input would be helpful in considering four of Fannie Mae's twenty-two proposed modifications that would each make a substantial change to the content of its Plan.

With respect to manufactured housing, the Plan modification would amend the chattel-only pilot to allow for participating in a debt structure in addition to bulk loan purchases. Specifically, Fannie would meet the stated purpose of the chattel loan pilot by purchasing outright, participating in a debt structure, or guaranteeing a security containing chattel loans (subject to the applicable regulations requiring at least a 50% participation in the underlying loans).

Freddie Mac has submitted one modification that FHFA considers to be a modest correction and, as a result, FHFA is not seeking public input on this proposal. Enterprise technical edits are not subject to public input or FHFA's Non-Objection.

FHFA requests public input on the proposed modifications to the 2018-2020 Underserved Markets Plan by Nov. 2, 2018 via the dedicated Duty to Serve page on FHFA's website at www.FHFA.gov/DTS or via mail to FHFA Division of Housing Mission and Goals, Seventh Floor, 400 Seventh Street SW, Washington D.C. 20219.

REQUEST FOR COMMENTS

FCC

TCPA - ATDS

Posted 10/3/2018.

Comment Date: October 17, 2018.

Reply Comment Date: October 24, 2018.

Following the recent decision of the U.S. Court of Appeals for the Ninth Circuit in *Marks v. Crunch San Diego, LLC*, the FCC is seeking further comment on what constitutes an "automatic telephone dialing system." The TCPA defines an automatic telephone dialing system 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 *Marks* court declared "the statutory language ambiguous on its face" as to the question of whether the phrase "using a random or sequential number generator" modifies both "store" and "produce." The Marks court then read the phrase "using a random or sequential number generator" not to apply to equipment that has the capacity "to store numbers to be called." In other words, the court interpreted the statutory language expansively so that an "automatic telephone dialing system" is "not limited to devices with the capacity to call numbers produced by a 'random or sequential number generator,' but also includes devices with the capacity to store numbers and to dial stored numbers automatically." The ACA court, however, held that the TCPA unambiguously foreclosed any interpretation that "would appear to subject ordinary calls from any conventional smartphone to the coverage in the C. Circuit's opinion in *ACA International v. FCC*.

LENDING

CASE LAW

ECOA – Disputes

CASE NAME: *Kolodzinski v. Pentagon Federal Credit Union*
DATE: *08/28/2018*
CITATION: *United States District Court, E.D. Wisconsin. Slip Copy. 2018 WL 4100536*

Plaintiff alleged that he applied for a home equity loan with Defendant and was informed he would have to resolve five disputes on his credit report before his application would be considered. After removing the disputes as directed, his credit score dropped below the minimum threshold required by Defendant for loan approval, thus resulting in denial. Plaintiff alleged that Defendant discriminated against him for exercising his

right to dispute debts, in violation of the Equal Credit Opportunity Act ("ECOA").

Plaintiff maintained that the disputes on his credit report were an exercise of his right under the FDCPA to require creditors to note disputes on accounts when reporting debts to a credit bureau. In his response brief, Plaintiff pointed to the FCRA as an additional source of his right to force disputed accounts to be listed as such. Plaintiff argued that by requiring him to remove his disputes from his credit report before considering his application, and ultimately denying it, Defendant violated Section 1691(a)(3) of the FDCPA.

The Court found that the provisions within the FDCPA and FCRA to which Plaintiff cited do not confer on him a "right" to dispute debts; they ensure that Plaintiff's disputed debts are accurately reported as such. Plaintiff did not allege that he sued his creditors or a reporting agency for noncompliance. Therefore, because Plaintiff did not allege that he exercised a right under the Consumer Credit Protection Act, his claim that Defendant discriminated against him for exercising such a right had to fail.

Motion to dismiss granted.

LEGISLATION

California

Modification – Language - Audits

2017 CA S 1201. Enacted 9/11/2018. Effective 1/1/2019.

This bill amends Cal. Civ. Code § 1632.5 to require a supervised financial organization that negotiates the modification of any of the terms of a loan or extension of credit secured by residential real property primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean and that offers a borrower a final loan modification in writing, to deliver to that borrower, at the time the final loan modification offer is made, a specified form summarizing the modified loan terms in the same language as the negotiation.

The bill authorizes the Department of Business Oversight, in making available each of its forms in each of the languages set forth above, to use as guidance the Agreement for Modification, Re-Amortization, or Extension of a Mortgage (Form 181), the Loan Modification Agreement (Providing for Fixed Interest Rate) (Form 3179), and the Loan Modification Agreement (Providing for Adjustable Interest Rate) (Form 3161) from the Federal National Mortgage Association.

The bill also amends Cal. Fin. Code § 50200 to provide that if, after the Commissioner of Business Oversight revokes the license of a licensee under the California Residential Mortgage Lending Act that is required to make an audit but fails to do so and fails to file a certified financial statement prepared by an independent certified public accountant, a request for hearing is filed in writing and a hearing is not held within a specified period of time, the order would be deemed rescinded as of its effective date. The bill prohibits a licensee, during the revocation period, from conducting business, except as specified. The revocation of a license does not affect the powers of the commissioner pursuant to the act.

ADOPTED RULE

California

Residential Energy Efficiency Loan Assistance Program

Formerly adopted as an emergency rule, this rule, effective 9/17/2018, adopts Cal. Code Regs. tit. 4, §§ 10091.1 to 10091.15, the Residential Energy Efficiency Loan Assistance Program.

The rule adds that manufactured and mobile homes are considered Eligible Properties if the mobile or manufactured home is anchored to a permanent, site-built foundation constructed of durable materials (i.e., concrete, mortared masonry, or wood).

"Eligible Property" means a residential property of no more than four (4) units that receives gas and/or electric service from one or more Investor-Owned Utilities, or

Community Choice Aggregators. Rented or leased properties are eligible with the owner's written consent to have the Eligible Improvements installed.

"Eligible Loan" means a loan or retail installment contract made by a Participating Financial Institution or Participating Finance Lender to a Borrower to finance Eligible Improvements on an Eligible Property.

A Participating Financial Institution or Participating Finance Lender may sell an Enrolled Loan or portfolio of Enrolled Loans at its discretion.

LEGISLATION

Delaware

Address change

2017 DE H 353. Enacted 9/4/2018. Effective immediately.

This bill amends Del. Code Ann. tit. 25, § 2124, Recordation of mortgagee's change of address, to clarify that the intent of Senate Bill No. 32 of the 149th General Assembly was to require mortgagees to file a statement of mortgagee address change when its notice address changed, not to require mortgagees to include each mortgage affected by a change of notice address.

The form added to the Delaware Code by the above has been removed to further aid clarity. In its place, each recorder is granted authority to issue a sample form.

The bill also clarifies that each recorder must create a statement of mortgagee address change index and provide for the minimum information required by such an index.

The bill provides a penalty for the failure to file a statement of mortgagee address change within 60 days of a change in notice address.

The bill grants each recorder the power to impose fees that reasonably reflect the costs necessary to defray expenses associated with creating and maintaining the statement of mortgagee address change index.

FINAL RULE

CFPB

TILA - Threshold increase

83 Federal Register 43503, August 27, 2018

Truth in Lending Act: Regulation Z: Threshold Amount Increase.

The final rule becomes effective Jan. 1, 2019.

The Bureau is amending the regulation text and official interpretations for Regulation Z, which implements TILA, to update the dollar amounts of various thresholds that are adjusted annually based on the annual percentage change in the CPI as published by the Bureau of Labor Statistics (BLS). Specifically, for open-end consumer credit plans under TILA, the threshold that triggers requirements to disclose minimum interest charges will remain unchanged at $1.00 in 2019. For HOEPA loans, the adjusted total loan amount threshold for high-cost mortgages in 2019 will be $21,549. The adjusted points-and-fees dollar trigger for high-cost mortgages in 2019 will be $1,077. For qualified mortgages, which receive certain protections from liability under the ability-to-repay rule, the maximum thresholds for total points and fees in 2019 will be 3 percent of the total loan amount for a loan greater than or equal to $107,747; $3,232 for a loan amount greater than or equal to $64,648 but less than $107,747; 5 percent of the total loan amount for a loan greater than or equal to $21,549 but less than $64,648; $1,077 for a loan amount greater than or equal to $13,468 but less than $21,549; and 8 percent of the total loan amount for a loan amount less than $13,468.

LICENSING

PROPOSED RULE

Rhode Island

Third-party servicers

This rule would amend 230 R.I. Code R. § 40-10-2 to expand the regulation scope to include third-party service providers who service mortgages in Rhode Island.

The rule would clarify that financial institutions, which are licensed under another portion of Title 19, do not also have to hold a third-party service provider license in order to service loans.

The rule reflects the fact that the Department has transitioned to an electronic licensing file and that annual statements must be uploaded to that system rather than filed with the Department in hard copy.

The rule would add the third-party servicer bond, provided for in R.I. Gen. Laws § 19146(a) (9), to the regulation. In addition, the section concerning additional bonds for branches is being removed to lessen the burden on the licensee.

The rule would clarify the requirements for Qualified Individuals and Branch Managers depending upon the type of license and the activity undertaken.

The rule removes the submission requirements that were necessary prior to the transition to electronic background checks in NMLS.

The rule would clarify the applicability of the statutory insurance claims agency designation to third-party loan servicers.

If adopted, the rule would delete the requirement that, for Chapter 7 discharges, the Division will normally require a minimum of six months credit history after discharge for an MLO applicant.

The rule would provide additional clarity on the documents which must be retained, explicitly expand the section to cover third-party loan services, amend the type of disclosures now required to be provided to consumers in connection with mortgage transactions and address record retention by licensees located outside of the United States.

ADOPTED RULE

South Dakota

Residential rental agents

Effective 10/8/2018, this rule amends S.D. Admin. Code R. 20:69:14:13 and :14.01:10 re: property managers and residential rental agents.

The rule adds S.D. Admin. Code R. 20:69:14:13, Required continuing education during initial biennial licensing cycle, to provide that any property manager licensed after January 1, 2019 shall provide to the commission proof of participation in not less than 30 hours of approved continuing education in the initial licensing cycle. Continuing education hours shall be in subject areas under § 20:69:11:01.05. Property managers who have completed the initial licensing cycle continuing education shall be subject to continuing education requirements as defined in 20:69:11:02.

The rule amends S.D. Admin. Code R. 20:69:14.01:10, Biennial proof by residential rental agent of continuing education, to provide that continuing education hours shall include both required subject areas under § 20:69:11:01.05 and elective subject areas under § 20:69:11:01.06.

SALES

LEGISLATION
California
Transfer disclosures

2017 CA A 1289. Enacted 9/29/2018. Effective 1/1/2019.

This bill amends Cal. Civ. Code § 1102.3, concerning Disclosures upon Transfer of Residential Property, to provide that:

If any disclosure, or any material amendment of any disclosure, required to be made by this article, is delivered after the execution of an offer to purchase, the prospective buyer shall have three days after delivery in person, five days after delivery by deposit in the mail, or five days after delivery of an electronic record in transactions where the parties have agreed to conduct the transaction by electronic means, pursuant to provisions of the Uniform Electronic Transactions Act (Title 2.5 (commencing with § 1633.1) of Part 2 of Division 3), to terminate his or her offer by delivery of a written notice of termination to the seller or the seller's agent. The period of time the prospective buyer has in which to terminate his or her offer commences when Sections I, II, and III in the form described in § 1102.6 are completed and delivered to the buyer or buyer's agent. A real estate agent may complete his or her portion of the required disclosure by providing all of the information on the agent's inspection disclosure set forth in Section 1102.6. (adding provisions re: electronic delivery and re: when the time to terminate commences).

The bill makes similar amendments to Cal. Civ. Code § 1103.3, relating to Disclosure of Natural and Environmental Hazards, Right-to-Farm, and Other Disclosures upon Transfer of Residential Property re: electronic delivery.

These provisions apply to a resale transaction entered into on or after January 1, 2000, for a manufactured home, or a mobilehome, which manufactured home or mobilehome is classified as personal property and intended for use as a residence.

ADOPTED RULE
Oklahoma
Sales tax

Effective 9/14/2018, this rule amends Okla. Admin. Code § 710:60-3-130 to provide that sales tax is not assessed on manufactured homes.

TAXES

LEGISLATION
California
Property taxes – Senior citizens

2017 CA S 1130. Enacted 9/28/2018. Effective 1/1/2019.

This bill, on July 1, 2019, and on July 1 each year thereafter, requires up to 1% of the amount available in the Senior Citizens and Disabled Citizens Property Tax Postponement Fund for disbursements relating to postponement of property taxes to be available for residential dwellings that are manufactured homes.

The bill repeals the Senior Citizens Mobilehome Property Tax Postponement Law and, instead, enacts the Senior Citizens Manufactured Home Property Tax Postponement Law, which, commencing July 1, 2019, establishes a procedure for the postponement of the payment of property taxes of a claimant who is the owner of a manufactured home.

This bill additionally requires all sums paid by the Controller to be secured by a lien in favor of the state when funds are transferred to the county by the Controller upon a manufactured home situated on real property owned by the claimant for which property taxes have been postponed. In the case of a manufactured home situated on real property not owned by the

claimant, requires the state' s interest to be secured by a security agreement in favor of the State of California. The bill also requires the Controller to maintain a record of all properties against which the Department of Housing and Community Development has been notified to withhold the transfer of title or permit for transport.

TITLING AND PERFECTION

ADOPTED RULE

Iowa

Electronic titling

Effective 10/17/2018, this rule amends Iowa Admin. Code r, 761-400.1, .3, .4, .5, .6, .7, .13, .28, .39, .40, .43, .45, .47, .50, .51, .53, .56, .60; -405.3.

The electronic registration and titling (ERT) process is updated to remove the need for dealers to obtain a notarized power of attorney and instead to require the vehicle purchaser to provide the dealer with written authorization for each ERT transaction. The amendments also reduce the record retention period for original documents from three years to six months. Requiring written authorization from the vehicle purchaser rather than a power of attorney and reducing the record retention period from three years to six months ensure the integrity of the ERT process without putting an undue burden on the participants in that process.

The rule provides that information and forms for vehicle registration, certificate of title, or other procedures covered under Iowa Code sections 321.18 to 321.173 may be obtained from the county treasurer or by mail from : the Office of Vehicle and Motor Carrier Services, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278; in person at Iowa Department of Transportation, 6310 SE Convenience Blvd., Ankeny, Iowa 50021; by telephone at (515)237-3264; or on the department's website atwww.iowadot.gov (adding the in-person address and website).

ADOPTED RULE

Mississippi

Power of Attorney to Transfer Motor Vehicle

Effective 11/1/2018, this rule amends 35 Miss. Admin. Code 35-VII-4.06 to provide that:

100 A motor vehicle power of attorney is a document that enables a car owner to grant all matters related to the registering, licensing, transfer of ownership, and/or titling of the vehicle to another individual. The proper form, “Power of Attorney to Transfer Motor Vehicle” should be obtained from the Department of Revenue. The “Power of Attorney to Transfer Motor Vehicle” must be included as a supporting document with an application for new certificate of title and/or an application for replacement certificate of title.

101 A properly completed “Power of Attorney to Transfer Motor Vehicle” cannot be reassigned to another individual and/or company.

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

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