McGLINCHEY STAFFORD

MHI Manufactured Housing Institute

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

WELCOME!

Welcome to the October issue of the Manufactured Housing Law Update. This month we have legal updates that should be of interest to many of our readers.

In the community space, the Fair Housing case involving a community requiring tenants to demonstrate that they were in the United States legally may interest you.

In the default servicing space, TCPA related litigation and developments continue.

If you pull consumer reports, the decision addressing a permissible purpose and consumer authorizations, or lack thereof, may be of interest.

Thank you for reading. We hope you had a Happy Halloween!

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COMMUNITIES

CASE LAW

Disparate impact

CASE NAME: *Reyes v. Waples Mobile Home Park Limited Partnership*
DATE: *09/12/2018*
CITATION: *United States Court of Appeals, Fourth Circuit. --- F.3d ----. 2018 WL 4344682*

Four Latino couples who live or lived at Waples Mobile Home Park challenged the Park's policy requiring all occupants to provide documentation evidencing legal status in the United States to renew their leases. Plaintiffs contended that the Policy violates the Fair Housing Act because it disproportionately ousts Latinos as compared to non-Latinos. The district court determined that Plaintiffs failed to make a prima facie case of disparate impact because they failed to show the required causation between the Policy and the disparate impact, and granted Defendants' motion for summary judgment. The residents appealed.

The appeals court noted that the district court concluded that Plaintiffs failed to make a prima facie case of disparate impact because they failed to satisfy the FHA's causation requirement, asserting that Plaintiffs did not show that the Policy was instituted " 'because of' race or national origin[.]"

According to the Court, the Policy required all occupants above the age of eighteen to provide documentation evidencing legal status, and failure to comply resulted in termination of the lease with Waples and eviction. Plaintiffs alleged that this Policy violates the FHA because it "is disproportionately ousting Hispanic or Latino families from their homes and denying them one of the only affordable housing options in Fairfax County, Virginia." Plaintiffs provided statistical evidence that Latinos constituted 64.6% of the total undocumented immigrant population in Virginia, and that Latinos were ten times more likely than non-Latinos to be adversely affected by the Policy, as undocumented immigrants constituted 36.4% of the Latino population compared with only 3.6% of the non-Latino population. Based on this evidence, Plaintiffs asserted that "a policy that adversely affects the undocumented immigrant population will likewise have a significant disproportionate impact on the Latino population."

Accepting these statistics as true, the Court concluded that Plaintiffs sufficiently alleged a prima facie case of disparate impact. Plaintiffs demonstrated that Waples' Policy caused a disproportionate number of Latinos to face eviction from the Park compared to the number of non-Latinos who faced eviction based on the Policy. Plaintiffs satisfied the robust causality requirement by asserting that the specific Policy requiring all adult Park tenants to provide certain documents proving legal status was likely to cause Latino tenants at the Park to be disproportionately subject to eviction compared to non-Latino tenants at the Park.

In determining that Plaintiffs were unable to demonstrate robust causality, the district court stated that "it is undisputed that the female plaintiffs are unable to satisfy the Policy—and prove legal presence in the United States—not because of their race or national origin, but because they are, in fact, unlawfully present in the country."

The Court found that this view of causation would require an intent to disparately impact a protected class in order to show robust causality, thereby collapsing the disparate-impact analysis into the disparate-treatment analysis. This interpretation would undermine the very purpose of disparate-impact claims.

Because the district court concluded that Plaintiffs failed to make a prima facie case of an FHA violation under a disparate-impact theory, it never considered whether the defendants met their burden under step two of the burden-shifting disparate-impact analysis to "state and explain the valid interest served by their policies."

Similarly, the district court never considered the third and final step in the burden-shifting analysis, which would have allowed Plaintiffs to "prov[e] that the substantial, legitimate, nondiscriminatory interests supporting the challenged practice could be served by another practice that has a less discriminatory effect."

Reversed and remanded.

REGULATORY REVIEW

Colorado

Licensing of owners and managers

Issued 10/15/2018.

The Colorado Coalition of Manufactured Homeowners submitted an application to the Colorado Office of Policy, Research, and Regulatory Reform (COPRRR) to review its request that the owners and managers of manufactured housing communities be licensed.

COPRRR found that there are laws and rules in place that regulate numerous aspects of manufactured housing communities. The instances of public harm discovered over the course of its review generally are addressed by existing laws or are already under the purview of state agencies. The value of imposing occupational regulation on manufactured housing community owners and managers would likely be minimal. Regulation, if done appropriately, should protect consumers. If consumers are not better protected and competition is hindered, then regulation may not be the answer. By erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services. COPRRR's recommendation was not to not regulate manufactured housing community owners or managers.

According to COPRRR, conditions for Colorado owners of manufactured homes could be improved by increasing community engagement within the communities, including the forming of homeowners associations and cooperatives; educating homeowners about their rights and encouraging them to challenge community owners when appropriate or file complaints with the proper authority; promoting opportunities for homeowners to purchase the communities they live in; and increasing political engagement at the local and the state level.

ADOPTED RULE

Ohio

Water systems

Effective 11/8/2018, this rule amends Ohio Admin. Code 3745-81-02, -87-01, -02, -03, -04, -05, -92-02, -03, -05 related to public water systems.

The rule provides that "Asset management program" means the development of a program that demonstrates the managerial, technical, and financial capability of a public water system, by the implementation of the tracking documents, programs or systems that will assist with the management and replacement of infrastructure assets to achieve metrics at the least cost and risk to the water system.

The rule requires that demonstration of capability be made through a written description of an asset management program that is acceptable to the director.

In order to demonstrate adequate technical capacity, the asset management program shall include approved capacity projections, including.

(a) Written approved capacities of small public water systems using only ground water (such as factories, mobile home parks, office buildings, restaurants, condominiums, and the like) will be established in accordance with Ohio EPA's "Guidelines for Design of Small Public Water Systems". Written approved capacity projections for all other water systems shall meet the requirements of Ohio EPA's "Planning and Design Criteria

for Establishing Approved Capacity for: 1) Surface Water And Ground Water Supply Sources, 2) Drinking Water Treatment Plants (WTPs), and 3) Source/WTP Systems".

LEGISLATION

Pennsylvania

Assistance and service animals

2017 PA H 2049. Enacted 10/24/2018. Effective 12/23/2018.

This bill adds the Assistance and Service Animal Integrity Act.

The bill provides that a landlord or association that receives a request from a person to make an exception to the landlord's or association's policy prohibiting animals or limiting the size, weight, breed or number of animals on the landlord's property or within property controlled by the association because the person requires the use of an assistance animal or service animal may require the person to produce documentation of the disability and disability-related need for the animal only if the disability or disability-related need is not readily apparent or known to the landlord or, in the case of an association, the executive board of the association.

A landlord or association shall not be liable for injuries caused by a person's assistance animal or service animal permitted on the landlord's property or within property controlled by the association as a reasonable accommodation to assist the person with a disability under the Fair Housing Act, section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Pennsylvania Human Relations Act or any other Federal, State or local law.

The bill provides for the offenses of misrepresentation of entitlement to assistance animal or service animal and for misrepresentation of an animal as assistance animal or service animal.

ADOPTED RULE

Texas

Water and sewer service

Effective 10/17/2018, these rules amend Title 16. Economic Regulation Part 2. Public Utility Commission Of Texas Chapter 24. Substantive Rules Applicable To Water And Sewer Service Providers, 16 Tex. Admin. Code §§ 24.3 et seq.

Provisions specifically related to manufactured home communities include:

A manufactured housing rental community can only be charged standby fees under a contract or if the utility installs the facilities necessary to provide individually metered service to each of the rental lots or spaces in the community;

The owner of a manufactured home rental community on which construction began after January 1, 2003, shall provide for the measurement of the quantity of water, if any, consumed by the occupants of each unit through the installation of: (1) submeters, owned by the property owner or manager, for each dwelling unit or rental unit; or (2) individual meters, owned by the retail public utility, for each dwelling unit or rental unit;

On the request by the property owner or manager, a retail public utility shall install individual meters owned by the utility in a manufactured home rental community on which construction began after January 1, 2003, unless the retail public utility determines that installation of meters is not feasible. If the retail public utility determines that installation of meters is not feasible, the property owner or manager shall install a plumbing system that is compatible with the installation of submeters or individual meters. A retail public utility may charge reasonable costs to install individual meters;

The rental agreement between the owner and tenant for manufactured home rental communities shall clearly state

in writing the service charge percentage that will be billed to tenants;

At the time a rental agreement is discussed, the owner shall inform the tenant of his rights and the owner's responsibilities under this subchapter;

A manufactured home rental community may charge a service charge in an amount not to exceed 9% of the tenant's charge for submetered water and wastewater service;

A bill for submetered service must include the total amount due for a service charge charged by an owner of a manufactured home rental community, if applicable;

After January 1, 2003, before an owner of a manufactured home rental community may implement a program to bill tenants for submetered or allocated water service, the owner or manager shall adhere to the following standards: (1) Texas Health and Safety Code, § 372.002, for sink or lavatory faucets, faucet aerators, and showerheads; (2) perform a water leak audit of each dwelling unit or rental unit and each common area and repair any leaks found; and (3) not later than the first anniversary of the date an owner of a manufactured home rental community begins to bill for sub-metered or allocated water service, the owner or manager shall: (A) remove any toilets that exceed a maximum flow of 3.5 gallons per flush; and (B) install toilets that meet the standards prescribed by Texas Health and Safety Code, § 372.002.

The above does not apply to a manufactured home rental community owner who does not own the manufactured homes located on the property of the manufactured home rental community.

PRESS RELEASE
FTC
Tenant screening

Issued 10/16/2018.

A Texas company, RealPage, Inc., agreed to pay $3 million to settle Federal Trade Commission charges that the company violated the Fair Credit Reporting Act by failing to take reasonable steps to ensure the accuracy of tenant screening information provided to landlords and property managers.

RealPage compiled screening reports through an automated system that used the applicant's first name, middle name when available, last name, and date of birth when searching for criminal records. Its matching criteria only required an exact match of an applicant's last name along with a non-exact match of a first name, middle name, or date of birth, the FTC alleged. For example, if RealPage searched an applicant named Anthony Jones born on October 15, 1967, it would deem a match if it found a criminal record for Antony Jones 10/15/67, Antonio Jones 10/15/67 and Antoinette Jones 10/15/67.

Because RealPage's screening reports associated some potential renters with criminal records that did not belong to them, those renters may have been turned down for housing or other opportunities, according to the complaint.

DEFAULT SERVICING

CASE LAW
TCPA - ATDS

CASE NAME: *Saunders v. Dyck O'Neal, Inc.*
DATE: *07/16/2018*
CITATION: *United States District Court, W.D. Michigan, Southern Division. 319 F.Supp.3d 907*

Saunders filed an action under the TCPA against Dyck O'Neal, Inc. arising from Dyck's efforts to collect a mortgage deficiency that Saunders alleged her ex-husband owed. From 2015 through 2017, Dyck called repeatedly and left approximately thirty voicemails on Saunders' phone. Dyck used a vender called VoApp to leave prerecorded "direct drop" voicemails. Dyck filed a

motion for summary judgment, arguing that the voicemails are not a violation.

According to the Court, rather than call the target's phone number and wait to reach the target's voicemail, VoApp utilizes technology that "causes the mobile switch to make a call to a phone number assigned to the voicemail service provider's enhanced service platform (i.e. the voicemail computer or server), not the consumer's phone number." By routing the message through the voicemail server itself, VoApp is able to deliver a voicemail message to the server space associated with the consumer—the consumer then receives a notification that she received a new voicemail message, but without having received a traditional call.

The Court found that voicemail messages are subject to the same TCPA restrictions as traditional calls, and Dyck's use of direct to voicemail technology was a "call" and fell within the purview of the TCPA. The statute itself casts a broad net—it regulates any call, and a "call" includes communication, or an attempt to communicate, via telephone. Both the FCC and the courts have recognized that the scope of the TCPA naturally evolves in parallel with telecommunications technology as it evolves, e.g., with the advent of text messages and email-to-text messages or, as here, new technology to get into a consumer's voicemail box directly.

Saunders received the notifications of Dyck's voicemails on her phone. She listened to the voicemails on her phone. Voicemails are intrinsically tied to cellular phones. By leaving a voicemail directly in the server space associated with Saunders' phone, Dyck was attempting to communicate with Saunders via her phone—which is the definition applied to the TCPA's use of "call." Further, Dyck's automated message instructed Saunders to call them at a specific phone number—inviting additional communication over the telephone.

The effect on Saunders was the same whether her phone rang with a call before the voicemail was left, or whether the voicemail was left directly in her voicemail box, i.e., Saunders received a notification on her phone that she had a new voicemail. The effect on Saunders was also the same as receiving a text message—which would fall under the TCPA.

Motion for Summary Judgment denied.

CASE LAW

TCPA - ATDS

CASE NAME: *Keyes v. Ocwen Loan Servicing, LLC*
DATE: *08/16/2018*
CITATION: *United States District Court, E.D. Michigan, Southern Division. --- F.Supp.3d ----. 2018 WL 3914707*

Keyes asserted that Ocwen called her at least 2,781 times between May 2013 and December 2016, attempting to collect on allegedly overdue payments, and over her objections, using an automatic telephone dialing system. Ocwen used a device called the Aspect Unified IP (the "Aspect System"). This system uses the Linux and Windows operating systems and "calls telephone numbers from a stored list." That list was first stored on a database called Realservicing. The Aspect System can only call numbers stored in the Realservicing database. If Ocwen wanted to call numbers outside of that set list, it would need to access the system's source code. Ocwen does not have access to the system's source code, and therefore, would need external permission to modify the Aspect System.

The Court noted that the TCPA provides that an ATDS must "ha[ve] 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 Court noted that, as to the capacity a device must have to constitute an ATDS, the Second and Third Circuits have concluded that the statutory language mandates the following examination: "how much is required to enable the device to function as an autodialer: does it require the

simple flipping of a switch, or does it require essentially a top-to-bottom reconstruction of the equipment. The former would constitute an ATDS, whereas the latter would not.

The Court found that Ocwen demonstrated that the Aspect System which it used to call Keyes required more than a flip of the switch to qualify as an autodialer. Indeed, to modify the Aspect System, Ocwen would need to alter the system's source code, and it did not have access to that code.

Also, the Aspect System did not possess the functions necessary to be an ATDS. Dialing from a set list is not the same as dialing numbers using a random or sequential number generator.

Thus, the Aspect System was not an ATDS because it lacked the necessary functionality.

The Court declined to exercise supplemental jurisdiction over the Michigan Regulation of Collection Practices Act claims.

CASE LAW

TCPA – ATDS

CASE NAME: *Gary v. Trueblue, Inc.*
DATE: *10/11/2018*
CITATION: *United States District Court, E.D. Michigan, Southern Division. Slip Copy. 2018 WL 4931980*

Gary initiated this action against TrueBlue, Inc. (d/b/a People Ready, Inc. and Labor Ready, Inc.) alleging Defendants used prohibited equipment to send text messages, in violation of the TCPA. Defendants moved for summary judgment.

People Ready, successor of Labor Ready, was a staffing company that helped place workers, using a messaging platform, WorkAlert, to inform them about potential jobs via text message.

The first step in placing a worker was for a People Ready employee to manually open the WorkAlert web browser application and enter their log-in credentials. Next, the employee input criteria to search for potential workers. Then the "search" button, returned a list of potential workers to whom the employee could consider sending a text message.

According to Defendants, there was no way to send a text message through the system without these several steps of human intervention. Even more, WorkAlert lacked the capability to randomly or sequentially text potential workers.

Plaintiff completed and signed an application form to join Labor Ready that contained a "Consent for Telephone Contact" provision.

Plaintiff asserted he received over 5,600 text messages from Defendants, even though on several occasions he revoked his consent. The Court noted, however, that it appeared that Plaintiff opted back in and continued to accept jobs via WorkAlert.

Plaintiff learned that Defendants' WorkAlert system acted in conjunction with a third-party aggregator called mBlox. According to Defendants, "Text messages leave Work Alert, go to mBlox and are then sent to each worker's wireless carrier to be delivered to the individual's cell phone." Plaintiff claimed that mBlox was a fully-automated-text-messaging system regulated by the TCPA, and because Defendants' WorkAlert system acted in conjunction with mBlox, Defendants' text messages violated the TCPA.

The Court found that Plaintiff failed to demonstrate that WorkAlert, when combined with mBlox, had the capacity to store or produce numbers to be called, using a random or sequential number generator.

Plaintiff did not add mBlox as a co-defendant, conduct discovery to see how mBlox interacted with Defendants' WorkAlert system, or even obtain evidence directly from mBlox to see how Java API and SMPP programs operated

within its system. Hence, even viewing all the evidence in a light most favorable to Plaintiff, no reasonable juror could decide in Plaintiff's favor on this issue.

The Court further found that WorkAlert and/or mBlox were not automatic telephone dialing systems irrespective of whether they had automated functions; automatic opt-out text messages are generally not actionable under the TCPA.

And, because there was no evidence that WorkAlert and/or mBlox had the capacity to randomly or sequentially text numbers, Defendants' use of a web-based messaging platforms did not automatically violate the statute.

Defendants' motion for summary judgment granted.

CASE LAW

Collection - Dispute

CASE NAME: *Garrett v. Credit Bureau of Carbon County*
DATE: *10/18/2018*
CITATION: *Colorado Court of Appeals, Division II. --- P.3d ----. 2018 WL 5073322*

Credit Bureau collected or attempted to collect debts owed, due, or asserted to be owed or due to another. On July 12, 2016, it sent Garrett a collection notice demanding payment on a consumer debt. On August 1, 2016, Credit Bureau sent Garrett a second collection notice.

Subsequently, Garrett sued Credit Bureau based on the contents of the two notices because of abusive, deceptive, and unfair practices prohibited by the Colorado Fair Debt Collection Practices Act (CFDCPA).

The district court concluded that Credit Bureau's notices had not violated the CFDCPA. Garrett appealed.

According to the Court, the CFDCPA requires a debt collector or collection agency to send a consumer debtor a written notice that, if the consumer notifies the debt collector or collection agency in writing within thirty-days that the debt, or any portion thereof, is disputed, the debt collector or collection agency will obtain verification of the debt the consumer and a copy of the verification will be mailed to the consumer.

There was no dispute that, in its July 12 debt validation notice, Credit Bureau provided Garrett with the information mandated. But Garrett contended that this information was contradicted by other language in the July 12 and August 1 notices or overshadowed by the language or format Credit Bureau used in presenting the information.

Garrett asserted that Credit Bureau's second notice would have created confusion in the mind of the least sophisticated consumer with respect to the consumer's obligation to dispute a debt in writing within the requisite thirty-day period, caused by the inclusion in the second notice of capitalized and bolded language in a larger font than the rest of the notice stating, "WE CANNOT HELP YOU UNLESS YOU CALL."

The Court noted that the district court did not analyze whether the appearance and text of the above-mentioned, large, capitalized, and bolded language was capable of being reasonably interpreted by the least sophisticated consumer in two different ways, one of which would be inaccurate.

The Court found that the statement, read as a whole, carried with it the implication that "we can only help you if you call." The least sophisticated consumer could (and, indeed, would most likely) apply the word "help" to encompass the means by which to avoid the debt in whole or in part—something that, by statute, could only be accomplished in writing, and within thirty days of the initial communication.

The judgment was reversed, and the matter remanded with directions to enter judgment on the pleadings in favor of Garrett, and to award Garrett her statutory damages, costs, and reasonable attorney fees.

CASE LAW

Mortgage assumption - ECOA

CASE NAME: *Sims v. New Penn Financial LLC*
DATE: *10/18/2018*
CITATION: *United States Court of Appeals, Seventh Circuit. --- F.3d ----. 2018 WL 5076136*

In October 2008, Mario and Tiffiny Sims, an African-American couple, purchased a house from John Tiffany. The Simses made a down payment and monthly payments to Tiffany for about a year. The Simses did not know that Tiffany had stopped making mortgage payments the prior May and still owed $126,000. Bank of New York Mellon notified them in December 2009 that it was foreclosing on the property.

To avoid foreclosure, the Simses offered to assume the debt. Tiffany wrote to the then-servicer, Resurgent, asking what was needed to "move this matter forward." Under Tiffany's mortgage, purchasers could assume the loan, so long as the loan servicer received information to evaluate them "as if a new loan were being made." Over the next four years, Resurgent never advised the Simses of what information it needed to evaluate their application. In 2012 the Simses acquired a quitclaim deed from Tiffany, and in 2013 the bank scheduled a foreclosure sale.

Shellpoint, the new servicer, informed the Simses nine months later of what information they needed to provide to apply to assume the loan and agreed to postpone a foreclosure sale.

The Simses maintained that they thrice sent the required financial records. According Shellpoint, however, the Simses never submitted an application complete enough to warrant review. Shellpoint also informed the Simses that they needed to bring Tiffany's loan current before they could assume it, but, without Tiffany's written consent, Shellpoint refused to disclose information about his missed payments.

The Simses asserted that Shellpoint frequently rebuffed their inquiries to Shellpoint about their application's status and Shellpoint personnel sometimes hung up on them or sent their calls to voicemail and did not call back. They eventually got through to a Shellpoint employee, K'tia Cox, who the Simses believed was African-American and who allegedly told them, "These people, you know how they treat us."

The Simses filed suit under the Equal Credit Opportunity Act, alleging that Shellpoint discriminated against them based on race by delaying their effort to assume Tiffany's loan and forcing them to make all of Tiffany's overdue payments as a condition of assumption—a condition that, they said, Tiffany's mortgage agreement did not require.

The magistrate judge first determined that the Simses "probably were not 'applicants'" under the Act because they were seeking to assume a line of credit, rather than to "exten[d], renew[ ], or continu[e]" one. But even if the Act applied, the judge continued, the Simses failed to present evidence of discrimination. Cox's statement was ambiguous and lacked foundation, and thus it was insufficient to show discrimination.

On appeal, the Court found that the district court correctly found that no reasonable jury could find that Shellpoint discriminated against the Simses based on their race. Their only evidence was Cox's statement, which was vague and required too much speculation to conclude that their race motivated Shellpoint to require them to satisfy Tiffany's outstanding loan payments. Rather, that requirement was consistent with the loan agreement, which conditioned assumption on Shellpoint's determination that its security would not be impaired. Moreover, the Simses did not point to evidence countering Shellpoint's statement that they never produced a complete application.

Affirmed.

CASE LAW

TCPA - ATDS

CASE NAME: *Adams v. Ocwen Loan Servicing, LLC*
DATE: *10/29/2018*
CITATION: *United States District Court for the Southern District of Florida, 2018 U.S. Dist. LEXIS 184513*

Defendant began servicing the mortgage on Plaintiff's property in 2011. Plaintiff specifically revoked consent to receive calls from Defendant on numerous occasions between July 2011 and January 2016. Nevertheless, Defendant called Plaintiff's cellular telephone more than three-hundred and ten times using an automatic telephone dialing system, a predictive telephone dialing system, and/or an artificial or pre-recorded voice.

Plaintiff brought a claim for violations of the TCPA. Defendant filed a motion seeking dismissal.

To state a claim for violation of the TCPA, a plaintiff must provide sufficient support of the following elements: "(1) a call was made to a cell or wireless phone, (2) by the use of an automatic dialing system or an artificial or prerecorded voice, and (3) without prior express consent of the called party."

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."

Citing *Marks v. Crunch San Diego, LLC, 904 F.3d 1041, (9th Cir. 2018)*, the Court found 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. The Court found that, in *Marks*, the Ninth Circuit "decline[d] to follow the Third Circuit's unreasoned assumption [in *Dominguez*] that a device must be able to generate random or sequential numbers in order to qualify as an ATDS." *Marks* held that the statutory definition of ATDS "includes devices with the capacity to dial stored numbers automatically. Accordingly, we read § 227(a)(1) to provide that the term automatic telephone dialing system means equipment which has the capacity—(1) to store numbers to be called or (2) to produce numbers to be called, using a random or sequential number generator—and to dial such numbers."

The Court concluded that Plaintiff's Complaint included sufficient allegations that supported his claim that the calls were autodialed and/or prerecorded. Plaintiff alleged that Defendant made upwards of 310 calls to Plaintiff's cellular telephone. Plaintiff also alleged that Defendant ignored Plaintiff's numerous demands that Defendant cease calling, which also suggested that Defendant was autodialing Plaintiff. Accordingly, Defendant's motion to dismiss the TCPA claim for failure to allege the use of an ATDS was denied. Defendant may raise the issue of whether an ATDS was used at summary judgment, after the opportunity to conduct discovery.

The Court also rejected Defendant's argument that debt collection calls are not covered by the TCPA.

CASE LAW

Foreclosure – Single refiling rule

CASE NAME: *Bauer v. Roundpoint Mortg. Servicing Corp.*
DATE: *10/29/2018*
CITATION: *United States District Court for the Northern District of Illinois, Eastern Division, 2018 U.S. Dist. LEXIS 184328*

Bauer defaulted on his home loan and JPMorgan attempted to foreclose, but, in November 2013, voluntarily dismissed its action. Then, in June 2015, JPMorgan voluntarily dismissed its second foreclosure action. In March 2016, the then-mortgagee, U.S. Bank, filed a third foreclosure action. Bauer moved to dismiss it, invoking Illinois's "single refiling rule." Because the rule

applied to the foreclosure, the court dismissed the case with prejudice in June 2017.

Carisbrook, became the owner and holder of the loan. Roundpoint, as servicer, attempted to collect, sending Bauer: (1) eleven billing statements; (2) a Notice of Default and Intent to Accelerate; (3) a Notice of Default indicating the "TOTAL [PLAINTIFF] MUST PAY TO CURE THE DEFAULT" and stating that if the alleged default "is not cured by 08/23/2017, Roundpoint may take steps to terminate [Bauer's] ownership in the property by acceleration of sums secured by mortgage, foreclosure by judicial proceeding, and sale of the Property." Bauer responded with a notice of error which advised Roundpoint that it was attempting to collect a debt that was uncollectible. Roundpoint answered NOE #1:

"As of the date of this letter, the loan is due for September 1, 2011 payment in the amount of $1,824.64, as well as all subsequent payment and fees. The unpaid principal balance of the loan is $178,949.22."

Bauer sent a second notice of error. Roundpoint's counsel, Wirbicki, responded that the voluntary dismissal of the second foreclosure did not have the effect of making the loan extinguished or entirely unenforceable. Roundpoint continued its efforts to collect the loan, and reported the negative information to credit agencies, alleging delinquent payments of debt of 120 days or more for each month since the second voluntary dismissal. Bauer disputed this debt.

Bauer sued Roundpoint, Carisbrook, Wirbicki Law Group, LLC, and Unknown Owners and Non-Record Claimants, alleging that his mortgage debt was unenforceable and therefore the defendants' attempts to collect the debt violated TILA, the FDCPA, RESPA, the Illinois Consumer Fraud Act, and FCRA. Bauer also asked the Court to enter a declaratory judgment quieting title against all defendants. Wirbicki moved to dismiss Bauer's two allegations against it (quiet title and FDCPA), while Roundpoint and Carisbrook moved to dismiss all the remaining charges asserted against them.

The Court found that, although the defendants could not legally enforce Bauer's mortgage debt in court, it did remain valid, so many of the claims failed as a matter of law. That said, Bauer adequately pled those counts that alleged the defendants threatened to foreclose, even though Illinois law procedurally barred them from doing so.

CASE LAW

TCPA - ATDS

CASE NAME: *Maes v. Charter Communication*
DATE: *10/30/2018*
CITATION: *United States District Court, W.D. Wisconsin. Slip Copy. 2018 WL 5619199*

Maes alleged that Charter Communication repeatedly called him using an autodialer in violation of the TCPA. Defendants moved to dismiss.

Maes relied on a 2003 order in which the FCC ruled that the TCPA's regulation of autodialers included any device that is a "predictive dialer," which is "equipment that dials numbers and, when certain computer software is attached, also assists telemarketers in predicting when a sales agent will be available to take calls." The FCC recognized that not all predictive dialers have the capacity to dial random or sequential numbers, but it reasoned that Congress intended for the TCPA to adapt to changes in technology. Thus, a device may qualify as an autodialer even if it does not generate random or sequential numbers. The FCC reaffirmed this order in 2008 and 2012. The FCC considered the definition of an autodialer again in 2015.

In *ACA International v. FCC, 885 F.3d 687 (D.C. Cir. 2018)*, the court of appeals for the D.C. Circuit held that, in 2015, the FCC unreasonably interpreted the meaning of the word "capacity." According to the Court here, though, because the 2015 order used a definition of capacity not found in prior orders, this portion of the court's ruling was not relevant to the validity of the 2003 definition.

In addition, *ACA International* found that the FCC's description of the functions of an autodialer in the 2015 order was contradictory. On the one hand, the FCC ruled that to qualify as an autodialer, equipment must have the capacity to generate and dial random or sequential numbers. But at the same time, the FCC reaffirmed its prior rulings on predictive dialers, and those prior rulings had unequivocally held that a predictive dialer falls under the statute even if it cannot be programmed to generate random or sequential numbers. Although either interpretation of the statute may be correct, the FCC could not choose both at the same time; the flaw in the 2015 ruling was not that it reaffirmed the 2003 order, but that it both reaffirmed the 2003 order and contradicted it. The court of appeals explicitly stated that it was not ruling on which interpretation of the TCPA was correct, so it was not reasonable to infer that it was reaching back and invalidating all prior FCC orders that expressed a particular interpretation of the TCPA. Although the court of appeals may have expressed doubt about the previous orders, the court did not expressly reject them. In the absence of such a rejection, district courts do not have the authority to impose their own interpretation of the TCPA.

Charter also argued that the FCC's rules were invalid based on a request for comment the FCC issued in response to *ACA Int'l*. But Charter did not point to any language in the request for comment stating that the commission's old rulings were invalid and Charter cited no authority that the FCC has the power to invalidate a rule in the context of a request for comment. Even assuming that the FCC will promulgate new rules that are in Charter's favor, Charter made no argument regarding whether the rules would apply retroactively. Regardless what the FCC does in the future, this court must apply the law as it exists today.

Applying the definition of autodialer promulgated in the 2003 order, the Court found that Maes plausibly alleged that Charter used an autodialer.

CASE LAW

TCPA - ATDS

CASE NAME: *Marks v. Crunch San Diego, LLC*
DATE: *10/30/2018*
CITATION: *United States Court of Appeals for the Ninth Circuit, 2018 U.S. App. LEXIS 30739*

The panel voted to deny Crunch San Diego, LLC's Petition for Rehearing and Petition for Rehearing En Banc.

Amicus briefs were filed by Sirius XM Radio Inc. and ACA International.

The full court was advised of the Petition for Rehearing En Banc and no Judge requested a vote on whether to rehear the matter en banc.

In *Marks v. Crunch San Diego, LLC, 904 F.3d 1041, (9th Cir. 2018)*, the 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.

CASE LAW

FDCPA – Repossessor fee

CASE NAME: *Duncan v. Asset Recovery Specialists, Inc.*
DATE: *10/31/2018*
CITATION: *United States Court of Appeals, Seventh Circuit. --- F.3d ----. 2018 WL 5623325*

Asset Recovery Specialists repossessed Duncan's vehicle on behalf of the lender, Wells Fargo Bank. Upon learning of it, Duncan called Wells Fargo, who told her she would need to satisfy the full amount of the defaulted loan to receive the car back. Unable to do so, Duncan focused on retrieving the personal items she had left in her car, and this resulted in discussions with a representative of Asset Recovery. Duncan alleged that Asset Recovery's president told her multiple times that she would have to pay $100 to receive her personal effects.

Duncan contended that, at a meeting in its office, Asset Recovery put before her an "assessment fee" form that stated she would have to pay a $100 fee to retrieve her property. She considered the $100 a demand for loan repayment. Asset Recovery denied making this demand of Duncan, and instead insisted that the $100 was nothing more than an administrative fee that Wells Fargo had agreed to pay. The discovery process turned up a document corroborating Asset Recovery's account. The "Receipt for Redeeming Personal Property," described the $100 as a "Handling Fee" and contained a handwritten notation that "All Fees billed to WFDS," plainly indicating that Wells Fargo Dealer Services would pay the fee. Apparently disbelieving that she did not owe $100, Duncan refused to sign the receipt form and thus never recovered her property. She instead brought suit in the district court alleging that Asset Recovery, its president, and Wells Fargo violated the FDCPA.

The district court granted summary judgment for the defendants, concluding that Duncan failed to come forward with any evidence refuting the defendants' showing, backed by the documentary record, that neither Asset Recovery nor Wells Fargo attempted to collect a $100 payment from her, and that, even if $100 was demanded of her, she had not come forward with any evidence casting doubt on the defendants' showing that the $100 was just an administrative handling fee owed to Asset Recovery, as opposed to a demand for repayment on the auto loan owed to Wells Fargo. Duncan appealed.

The appeals court found that Duncan was not able to back her allegation that Asset Recovery demanded the $100 fee of her with anything beyond her own say so. Asset Recovery, on the other hand, backed its contrary testimony with the Receipt for Redeeming Personal Property, which expressly established that Wells Fargo—not Duncan—would make the $100 payment.

The same documentary evidence showed that the $100 handling fee was just that—an administrative expense that Asset Recovery sought to recover for its role in processing requests to redeem personal property from repossessed vehicles. There was no way on the record to view the handling fee as some sort of masked demand for a principal payment to Wells Fargo.

Further, even if the Court accepted Duncan's contention that her initial phone calls with Asset Recovery entailed a demand for a $100 payment, she needed to go further and create a genuine issue of fact as to whether Asset Recovery demanded such a payment on behalf of Wells Fargo as a lender. A repossessor does not act on behalf of a creditor or otherwise play the role of a debt collector by charging an administrative fee for its own services.

Affirmed.

CASE LAW

Foreclosure – Possession of note

CASE NAME: *Deutsche Bank National Trust Company, as Trustee for American Home Mortgage Assets Trust 2006-6 v. Noll*
DATE: *10/31/2018*
CITATION: *District Court of Appeal of Florida, Second District. --- So.3d ----. 2018 WL 5624389*

In March of 2011, Deutsche Bank filed suit against Noll to foreclose on a mortgage (the "Prior Foreclosure"). Deutsche Bank filed the original promissory note with the Clerk in anticipation of a hearing on its motion for summary judgment. The Prior Foreclosure was involuntarily dismissed without prejudice on November 10, 2014. Deutsche Bank did not retrieve the original promissory note from the court file.

On May 5, 2015, Deutsche Bank filed another foreclosure action based on the same promissory note. It alleged that it was the holder of the original note secured by the mortgage. A copy of the promissory note was attached to the complaint. In the certification of possession of original promissory note, Deutsche Bank's attorney certified that "[she] reviewed the original Note at Collier County Courthouse and personally verified that Collier County Clerk is in the possession of the Note on behalf of

Plaintiff." The Court granted Deutsche Bank's motion to transfer the original loan documents filed in the Prior Foreclosure into the new court file.

The trial court granted summary judgment in favor of Noll based upon its finding that the Clerk was the holder of the original note at the time the complaint was filed and, as a result, Deutsche Bank lacked standing to foreclose. Deutsche Bank appealed.

The Court found that lack of direct, physical possession of the original promissory note when the case is filed does not, without more, defeat a party's ability to establish its standing to foreclose.

The Court distinguished this case from *Partridge v. Nationstar Mortgage, LLC, 224 So.3d 839 (Fla. 2d DCA 2017)*, where the issue was a purported assignment of the mortgage, but not the note, after the original note was filed with the court in the prior foreclosure action instituted by a different plaintiff, and *Geweye v. Ventures Trust 2013-I-H-R, 189 So.3d 231 (Fla. 2d DCA 2016)*, in which the court held that the substituted plaintiff lacked standing to enforce the note at the time of trial despite the original note having been in the court file because the evidence established the mortgage, but not the note, had been assigned to the plaintiff.

Here, while the note did remain in the direct, physical possession of the Clerk in the case file of the Prior Foreclosure at the time of filing the second action, Deutsche Bank was the plaintiff in both actions. And because Deutsche Bank retained the power to exercise control over the note, it had the possession necessary to establish that it was a holder with standing to file the later foreclosure action.

A plaintiff must surrender the original promissory note prior to entry of final judgment of foreclosure in order to prevent the note from being further negotiated. This purpose is irreconcilable with the notion that the Clerk itself becomes the holder by virtue of being entrusted with the note to prevent its negotiation.

Reversed and remanded.

INSTALLATION

ADOPTED RULE

Alabama

Corrections of installation

Effective 11/23/2018, this rule amends Ala. Admin. Code r. 535-X-12-.07, Inspection Of Installation, to add that the installer of a manufactured home or manufactured building shall correct all installation deficiencies within 30 days. The failure to make required corrections may result in suspension or revocation of the installer's license.

ADOPTED RULE

Alabama

Transportation

Effective 11/23/2018, this rule amends Ala. Admin. Code r. 535-X-12T-.04, Manufactured Housing Units That Shall Not Be Transported, to provide that certain manufactured housing units shall not be transported into (deleting, or within) Alabama unless the transporter has obtained a letter of exception from the Alabama Manufactured Housing Commission.

LENDING

CASE LAW

FCRA – Permissible purpose

CASE NAME: *Long v. Bergstrom Victory Lane, Inc.*
DATE: *10/04/2018*
CITATION: *United States District Court, E.D. Wisconsin. Slip Copy. 2018 WL 4829192*

In 2018, Long was pre-qualified by Capital One Auto Finance to purchase a vehicle.

She went to Victory Lane to purchase a vehicle and provided a Victory Lane employee with a copy of her Capital One Auto Finance pre-qualification letter. She instructed the employee that he could only run her credit with Capital One Auto Finance and was not to run her credit with any other entity. Long later learned that Victory Lane had submitted her credit application and report to a number of companies, including Capital One Auto Finance, with intentional disregard to the authority she gave it. She asserted that she suffered emotional distress as a result.

Long asserted Victory Lane acted with an impermissible purpose when it obtained her consumer credit report.

The Court found that, pursuant to the Fair Credit Reporting Act, a consumer report can be furnished when a person "intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer." 15 U.S.C. § 1681b(a)(3)(A).

According to the Court, "[u]nder the FRCA, a business does not require the consent of the potential customer, so long as it has a statutorily defined 'permissible purpose.'" *Santangelo v. Comcast Corp., No. 15-cv-0293, 2015 WL 3421156, (N.D. Ill. May 28, 2015)*. The Court held that § 1681b(a)(3)(A) gave Victory Lane the authority to search out lenders for Long so that she could obtain financing for a vehicle—a statutorily-defined permissible purpose. Despite her objection, when she sought to buy a vehicle from Victory Lane, and agreed to let them use her consumer report to obtain financing, this qualified as a permissible purpose under the statute. Long therefore failed to state a claim under the FCRA, and the claim was dismissed.

CASE LAW

RMBS– Statute of limitations

CASE NAME: *Deutsche Bank National Trust Company Trustee for Harborview Mortgage Loan Trust v. Flagstar Capital Markets Corporation*
DATE: *10/16/2018*
CITATION: *Court of Appeals of New York. --- N.E.3d ---. 2018 WL 4976777*

Quicken Loans, Inc. originated mortgage loans that it sold to Morgan Stanley Mortgage Capital, Inc. pursuant to a contract entitled, "Second Amended and Restated Mortgage Loan Purchase and Warranties Agreement" (MLPWA), dated June 1, 2006. The loans were sold to the HarborView Mortgage Loan Trust 2007–7 for the purpose of issuing residential mortgage-backed securities.

Plaintiff filed a summons with notice against defendant on August 30, 2013. Plaintiff's complaint was filed on February 3, 2014, alleging that defendant breached the MLPWA by selling defective mortgage loans that did not comply with representations and warranties.

Plaintiff did not dispute that the representations and warranties made by defendant were effective as of the closing date, but argued that the statute of limitations had yet to lapse, relying upon a provision in the MLPWA referred to as the "accrual clause," which stated:

"Any cause of action against the Seller relating to or arising out of the breach of any representations and warranties made in Subsections 9.01 and 9.02 shall accrue as to any Mortgage Loan upon (i) discovery of such breach by the Purchaser or notice thereof by the Seller to the Purchaser, (ii) failure by the Seller to cure such breach, substitute a Qualified Substitute Mortgage Loan or repurchase such Mortgage Loan as specified above and (iii) demand upon the Seller by the Purchaser for compliance with this Agreement."

The Supreme Court, New York County, held that any breach of defendant's representations and warranties

concerning the individual mortgage loans occurred on the closing date, and that the accrual clause could not serve to extend the statute of limitations. The trial court held that the accrual clause did not create a substantive condition precedent or constitute a promise of future performance. The Appellate Division affirmed, concluding that to the extent the parties intended for the accrual clause to delay accrual of the breach of contract cause of action, the clause was unenforceable because it violated New York public policy.

On further appeal, the Court found that the cure or repurchase protocol was merely the remedy for a breach of the representations and warranties, not a promise of the loans' future performance. The accrual clause itself referred to a "breach" of the representations and warranties, and the contract nowhere suggested that defendant's transfer of loans that did not comply with the representations and warranties was not a "breach" of the MLPWA. Rather, defendant's obligations to cure or repurchase a defective mortgage loan constituted plaintiff's "sole remedies" for "a breach of the foregoing representations and warranties."

The Court also found that, assuming for the sake of argument that the accrual clause manifested the clear intent of the parties that a cause of action for a breach of the representations and warranties "comes into existence (accrues) – only after the conditions of the Accrual Clause are complete," this conflicted with New York law and public policy.

N.Y. Gen. Oblig. Law § 17–103 requires an agreement to extend the statute of limitations to be made "after accrual of the cause of action," and allows extension of the limitations period only for, at most, the time period that would apply if the cause of action had accrued on the date of the agreement.

Affirmed.

PRESS RELEASE

FHFA

Mortgage translations

Issued 10/15/2018.

The Federal Housing Finance Agency (FHFA), Freddie Mac and Fannie Mae together announced the launch of Mortgage Translations – a centralized clearinghouse of online resources to assist lenders, servicers, housing counselors, and other real estate professionals in serving limited English proficient (LEP) borrowers.

FHFA, Freddie Mac and Fannie Mae collaborated with industry experts, consumer advocates, and other government agencies in developing the online collection of mortgage documents, educational materials, and a new online Spanish-English glossary produced by the Bureau of Consumer Financial Protection in collaboration with FHFA and the Enterprises. The glossary is expected to be particularly helpful in standardizing translations across the mortgage industry.

The first phase of the launch consists of Spanish-language documents. According to the U.S. Census, persons who speak Spanish as their primary language comprise more than 60 percent of the LEP population in the U.S. Resources in four other languages commonly spoken by LEP households – Chinese, Vietnamese, Korean, and Tagalog – will be added in the coming years.

ALERT

Fannie Mae

Employment misrepresentation

Issued 10/16/2018.

Misrepresentation of Borrower Employment Scheme, Southern California, Los Angeles County.

Fannie Mae's Mortgage Fraud Program has identified several entities listed on loan applications as places of employment that appear to be fictitious. The alert includes a list of employers and contains 40 entities/businesses that were listed as the borrower's purported place(s) of employment but whose existence Fannie Mae could not confirm. This list is subject to change.

The alert also includes a list of "Red Flags" and Red Flag exhibits.

BULLETIN
OCC
Appraisals and evaluations

OCC BULLETIN 2018-39. Issued 10/16/2018.

The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (collectively, the agencies) published answers to FAQs concerning appraisals and evaluations for real estate transactions that are covered by the interagency appraisal rules (12 CFR 34, subpart C). These FAQs clarify existing regulatory requirements and guidance provided in the 2010 Interagency Appraisal and Evaluation Guidelines and in the 2016 Interagency Advisory on Use of Evaluations in Real Estate-Related Financial Transactions. These FAQs are the agencies' interpretations of existing rules and guidance based on the facts and circumstances presented in the questions. These FAQs are not official rules or regulations.

The agencies are rescinding the 2005 FAQ but are incorporating some of the FAQ into this new FAQ document.

These FAQs address the following topics:

Regulatory and statutory requirements relating to appraisals and evaluations.

Review of appraisals and evaluations by financial institutions.

Exemptions in the appraisal rule concerning abundance of caution, use of existing appraisals in subsequent transactions, and qualifying business loans.

Development of appraisals and evaluations.

Appraisal independence.

LICENSING

ADOPTED RULE
Alabama
New salespersons

Effective 11/23/2018, this rule amends Ala. Admin. Code r. 535-X-14-.03, Licensing, to provide that new salespersons to the manufactured homes or manufactured buildings industry will be allowed to work under a provisional license until the next school is available (deleting, or 180 days, whichever is later).

ADOPTED RULE
Alabama
License fees

Effective 11/23/2018, this rule amends Ala. Admin. Code r. 535-X-17-.04, Administrative Costs, to provide that license fees established or revised in accordance with Ala. Code § 24-6-4. Powers and duties; fund; Sunset provision (referring to the Manufactured Housing Commission); § 24-5-6. Licenses for sale of manufactured homes; § 24-5-10. License fees. (dealers); and Chapter 535-X-16 of the Commission Rules and Regulations may be prorated at the Administrator's discretion.

MANUFACTURING

PROPOSED RULE

EPA

Formaldehyde emission standards

83 Fed. Reg. 54892 (11/01/2018).

Amendments to 40 CFR 770.

EPA is proposing to amend the regulations promulgated in a final rule that was published in the Federal Register on December 12, 2016, concerning formaldehyde emission standards for composite wood products. EPA is publishing these proposed amendments to address certain technical issues and to further align the final rule requirements with the California Air Resources Board (CARB) Airborne Toxic Control Measures (ATCM) Phase II program. Addressing these technical issues would add clarity for regulated entities. These revisions to the existing rule would also streamline compliance programs and help to ensure continued smooth transitions for supply chains to comply with the requirements associated with regulated composite wood products.

Comments must be received on or before December 3, 2018.

Potentially affected entities may include:

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

• Prefabricated wood building manufacturing (NAICS code 321992).

• Other construction material merchant wholesalers (NAICS code 423390), e.g., merchant wholesale distributors of manufactured homes (i.e., mobile homes) and/or prefabricated buildings.

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

• Motor home manufacturing (NAICS code 336213).

• Travel trailer and camper manufacturing (NAICS code 336214).

• Recreational vehicle (RV) dealers (NAICS code 441210).

• Recreational vehicle merchant wholesalers (NAICS code 423110).

MISSOURI RULES

ADOPTED RULE

Missouri

Withdrawn and rescinded rules

The following are withdrawn and rescinded Missouri Manufactured Housing Rules, effective 11/30/2018.

Mo. Code Regs. Ann. tit. 4, § 240-120.070, Manufacturers and Dealers Reports. This rule provided that manufacturers and dealers shall file reports with the secretary of Housing and Urban Development as may be required under Section 614 of the Act, 42 U.S.C. 5413.

PURPOSE: This rule is being rescinded in its entirety because section (1) restates a federal requirement and section (2) has been moved to Mo. Code Regs. Ann. tit. 4, § 240-120.065.

Mo. Code Regs. Ann. tit. 4, § 240-120.080, Commission Reports. This rule provided that the manager shall make reports to the secretary of Housing and Urban Development as required by the Housing and Urban Development regulations.

PURPOSE: This rule is being rescinded in its entirety because it restates a federal requirement.

Mo. Code Regs. Ann. tit. 4, § 240-121.010, Definitions. This rule defined the terms used in this chapter.

PURPOSE: This rule is being rescinded in its entirety because it is no longer necessary.

Mo. Code Regs. Ann. tit. 4, § 240-121.020, Administration and Enforcement. This rule delegated the responsibility

for administering and enforcing the code, this chapter and Chapter 700, Mo. Rev. Stat. as it related to preowned mobile homes.

PURPOSE: This rule is being rescinded in its entirety because it is no longer necessary.

Mo. Code Regs. Ann. tit. 4, § 240-121.030, Seals. This rule described the preowned mobile homes to which seals or approved insignia were affixed and the standards and procedures which related to the issuance of seals and the removal of seals and approved insignia.

PURPOSE: This rule is being rescinded in its entirety because it is no longer necessary.

Mo. Code Regs. Ann. tit. 4, § 240-121.050, Inspection of Preowned Manufactured Homes Rented, Leased or Sold or Offered for Rent, Lease or Sale by Persons Other Than Dealers. This rule set forth the extent to which preowned manufactured homes rented, leased, sold or offered for rent, lease or sale by persons other than dealers were subject to inspection by the director.

PURPOSE: This rule is being rescinded in its entirety because it is no longer necessary.

Mo. Code Regs. Ann. tit. 4, § 240-121.060, Complaints and Review of Director Action. This rule provided for the manner in which complaints were filed and the procedure by which commission review of the decisions, directives and interpretations of the director were obtained.

PURPOSE: This rule is being rescinded in its entirety because it is no longer necessary.

Mo. Code Regs. Ann. tit. 4, § 240-121.170, Criteria for Good Moral Character for Registration of Manufactured Home Dealers. The Missouri Public Service Commission was charged with the responsibility of determining that applicants for registration as manufactured home dealers are of good moral character. This rule established the criteria for evaluating applicants for dealer registration as to their good moral character.

PURPOSE: This rule is being rescinded in its entirety because it is no longer necessary.

Mo. Code Regs. Ann. tit. 4, § 240-121.180, Monthly Report Requirement for Registered Manufactured Home Dealers. This rule outlined the information that registered manufactured home dealers filed with the Missouri Public Service Commission and the form and manner of this filing.

PURPOSE: This rule is being rescinded in its entirety because it is no longer necessary.

Mo. Code Regs. Ann. tit. 4, § 240-124.045, Anchoring Standards. This rule applied to the anchoring of any manufactured home purchased or relocated on or after the effective date of this rule. This rule was not applicable to any manufactured home which had previously been anchored at its existing location and which had not been relocated subsequent to the effective date of this rule.

PURPOSE: This rule is being rescinded in its entirety because it is duplicative of existing rules.

SALES

LEGISLATION

Pennsylvania

Park models

This bill amends 63 Pa. Stat. Ann. § 818.2, Definitions, to add that "Park model RV" is a vehicle that:

(1) Is designed and marketed as temporary living quarters for recreational camping, travel or seasonal use.

(2) Is not permanently affixed to real property for use as a permanent dwelling.

(3) Is built on a single chassis mounted on wheels with a gross trailer area not exceeding 400 square feet in the set-up mode.

(4) Is certified by the manufacturer as complying with the ANSI A119.5 Park Model Recreational Vehicle Standard.

The bill provides that "Recreational vehicle" includes a Park model RV.

The bill adds a new chapter, Recreational Vehicles, to regulate the relationship between recreational vehicle dealers, manufacturers and suppliers.

The bill requires a written agreement between a manufacturer or distributor and a dealer.

The bill provides for warranty obligations and for inspection and rejection by dealer.

A manufacturer or distributor may not coerce or attempt to coerce a dealer to:

(1) purchase a product that the dealer did not order;

(2) enter into an agreement with the manufacturer or distributor; or

(3) enter into an agreement that requires the dealer to submit its disputes to binding arbitration or otherwise waive rights or responsibilities provided under this chapter.

TITLING AND PERFECTION

LEGISLATION

Pennsylvania

Tax status certification

2017 PA H 783. Enacted 10/19/2018. Effective 12/18/2018.

This bill amends 75 Pa. Cons. Stat. § 1111.1, Transfer of ownership of vehicles used for human habitation, to provide:

(a) Tax status certification.--If a mobile home or manufactured home that has been anchored to the ground to facilitate connections with electricity, water and sewerage, and previously titled in this Commonwealth (adding, in this Commonwealth) to a person using the mobile home or manufactured home as a residence in this Commonwealth immediately preceding its sale or transfer (adding, in this Commonwealth immediately preceding its sale or transfer), is offered for sale or transfer, the transferor shall obtain a tax status certification from the tax claim bureau of the county in which the mobile home or manufactured home is situated showing the county, municipal and school district real estate taxes (adding, county, municipal and school district) due on the mobile home or manufactured home, as shown by the bureau's records as of the date of the certification, including any delinquent taxes turned over to a third party for collection (adding, including any delinquent taxes turned over to a third party for collection). The tax status certification shall be provided to the transferee and the department in conjunction with the transfer of the mobile home or manufactured home.

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