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 November issue of the Manufactured Housing Law Update. We hope you and your family had a wonderful Thanksgiving and that you have a joyous holiday season.

This month's Update is relatively brief, but does have some significant items of interest, including the BCFP's updated small entity compliance guides, which notes that Section 107 of S.2155 was effective in May when it was signed by the President.

Enjoy the holidays and look for future Updates after the New Year!

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COMMUNITIES

CASE LAW

Zoning – Non-confirming use

CASE NAME: *Rochester City Council v. Rochester Zoning Board of Adjustment*
DATE: *09/07/2018*
CITATION: *Supreme Court of New Hampshire. --- A.3d ----. 2018 WL 4266716*

Donald and Bonnie Toy owned a 14.5-acre manufactured housing park known as "Addison Estates," containing 25 approved lots. The Toys installed an on-site sewage disposal system in Addison Estates and provided "for maintenance of all of the private utilities within the subdivision."

In April 2014, the Rochester City Council passed an updated zoning ordinance that eliminated manufactured housing parks as permitted uses anywhere in the city.

In 2015, the Toys purchased a 22-acre lot (Lot 54-1) that abutted Addison Estates. In August 2016, they applied for a variance to expand their manufactured housing park onto Lot 54-1.

The Toys estimated that the proposed 14 units would generate $75,000 of annual tax revenue for Rochester. The Toys agreed to restrict ownership of the units in Lot 54-1 to persons aged 55 or older. They expected the age restriction to limit the likelihood that school-age children would live in the development, thereby minimizing the potential impact on city services.

The ZBA granted the Toys' variance request.

The plaintiff filed a motion for rehearing, which the ZBA denied. The plaintiff appealed to the trial court, arguing that the ZBA granted a variance without finding hardship, and filed two motions to expand the record, including evidence that the ZBA chairman was prejudiced in the Toys' favor and was upset with the change to the Rochester Zoning Ordinance. The court denied both motions, ruling that the plaintiff was "attempting to introduce into the record an entirely new issue — one that was at no time raised in the proceedings below — and which does nothing to clarify, explain, or augment the record before the ZBA relating to the variance."

The trial court affirmed the ZBA's decision. The court determined that the ZBA could have reasonably concluded that, "because the lot is irregularly and uniquely shaped, and contains wetlands and challenging topographical features, the lot essentially requires the type of development" that the Toys proposed. The court further ruled that "the ZBA could have reasonably determined that because the new zoning ordinance removes manufactured housing parks from the inventory of permitted uses city-wide, the proximity to existing manufactured home parks is a special condition that renders this property unique in Rochester for purposes of a variance." The City appealed.

The appeals court found that the trial court correctly recognized that the ZBA's grant of a variance carried with it an implicit finding of hardship. Although the ZBA did not explicitly address unnecessary hardship in its written decision, the record shows that the Toys addressed unnecessary hardship in their variance application, and that the ZBA discussed whether the Toys had demonstrated unnecessary hardship. The ZBA's failure to explicitly make a finding regarding unnecessary hardship was not an error.

The Court also found that the trial court addressed the plaintiff's argument that the ZBA "impermissibly granted the variance because the ZBA disagreed with the Zoning Ordinance concerning manufactured home parks." In denying the plaintiff's motions to expand the record. The trial court noted that the plaintiff did not raise this argument during either the hearing or in the plaintiff's motion for rehearing and the court declined to address this argument for the first time on appeal.

The Court also agreed with the trial court that the ZBA could have reasonably concluded that the Toys presented sufficient evidence of unnecessary hardship.

Affirmed.

CASE LAW

FHA – Reasonable accommodation

CASE NAME: *Fitzsimmons v. Sand & Sea Homeowners Ass'n*
DATE: *11/29/2018*
CITATION: *United States District Court for the Southern District of Florida. 2018 U.S. Dist. LEXIS 201863*

Defendants were the owners and managers of a mobile home community. Plaintiff had lived at the Property since about 2006. Defendants' community rules allowed one domesticated pet per household subject to approval. Plaintiff already had a dog living at the property, which Defendants approved. Plaintiff became disabled as a result of an accident in 2009. Between 2009 and October 2017, Plaintiff lived at the Property without the assistance of a service dog. On October 27, 2018, Plaintiff's wife submitted a written note informing Defendants that Plaintiff's six month-old puppy, a second dog, was living with him as a service dog.

Defendants requested that Plaintiff complete a medical release and reasonable accommodation request verification. Plaintiff did not complete the release or verification form, but instead provided service dog identification cards purchased from www.adaregistry.com, veterinary records for his service dog, his handicap parking placard, and copies of his disability checks. The ADA Registry service is not a certification process, and the only requirement to obtain a service dog identification card is a $55 payment. As a result of Plaintiff's failure to provide supporting evidence of his disability and need for a service dog, Defendants advised Plaintiff that his request for reasonable accommodation could not be granted.

Plaintiff sued, alleging he was harassed and discriminated against by Defendants, and that Defendants failed to provide a reasonable accommodation in violation of the Fair Housing Act.

According to the Court, to prevail on a Section 3604(f)(3)(B) claim, a plaintiff logically must first establish that he is disabled or handicapped within the meaning of the FHA.

The only information in the record regarding Plaintiff's disability was contained in the Complaint. There, Plaintiff alleged that as a result of an accident, he suffered permanent brain injury, herniated discs in his neck, a broken back, and required hip and knee surgeries significantly limiting his mobility. However, Plaintiff did not provide any supporting documentation with respect to his injuries and limitations; there was no documentation in the record regarding Plaintiff's alleged disability. Moreover, numerous photographs attached to the affidavit of the community manager of the Property, depicting Plaintiff riding a scooter, and standing and walking unaided, contradicted Plaintiff's otherwise unsupported assertions. Accordingly, even viewed in the light most favorable to Plaintiff, the record did not support a finding that Plaintiff was disabled under the FHA. As a result, the Court did not need to consider Defendants' remaining arguments.

Defendants' Motion granted. Plaintiff's claims were dismissed with prejudice.

ADOPTED RULE

Colorado

Waste water collection systems

This rule amends 5 Colo. Code Regs. 1003-2, Regulation 100, to add 100.9.4 to provide that wastewater collection systems for a campus with multiple buildings (e.g., business, educational, camps, mobile home parks) with one owner of the campus property and any of the following conditions are to be classified and expected to

operate under the supervision of a certified operator in responsible charge in accordance with this regulation:

(a) Size exceeding 10,000 feet collection system pipe.

(b) Having a lift station with a designed capacity to receive greater than 2,000 gpd (domestic wastewater treatment works) located on the property and discharging to another collection and/or treatment system beyond the property of the owner, unless legal arrangements are made with the receiving collection and/or treatment system to maintain the lift station.

ADOPTED RULE

Mississippi
Weatherization Assistance Program

Effective 12/19/2018, this rule amends Miss. Admin. Code 18-20:1.1, relating to the Weatherization Assistance Program state plan in preparation for submission to the Department of Human Services for federal assistance.

The purpose of the program is to ensure weatherization services are being provided to low-income persons that live in all types of housing (i.e. single-family, manufactured housing units, and multifamily buildings).

The rule amends V.5.1, Technical Guide and Materials, to provide that the State of Mississippi Weatherization Assistance Program (WAP) will utilize the National Energy Audit Tool (NEAT), the Mobile Home Energy Audit (MHEA), and the Mississippi Weatherization Field Guide (Approved 2015), which have been updated to cross reference the SWS, to ensure that all work is being performed in accordance to the DOE approved energy audit procedures and 10 CFR 440 Appendix A. Adding - (The state of Mississippi will use the H.E.A.T tracking system upon approval).

The rule also amends V.5.2, Energy Audit Procedures, to provide that, to ensure that the most cost-effective measures are used, the subgrantees will use the Mississippi Priority List for Single-Family Homes, Mississippi Priority List for Mobile Homes (Approved 2017), and the Mississippi Weatherization Field Guide (Approved 2015), the National Energy Audit (NEAT), and Mobile Home Energy Audit (MHEA) (adding, the National Energy Audit (NEAT), and Mobile Home Energy Audit (MHEA)), to ensure that the Standard Work Specifications (SWS) are being adhered to when applying weatherization measures. (See Attachments for Priority Measures list). The National Energy Audit (NEAT), and Mobile Home Energy Audit (MHEA), must be performed on dwellings that are outside the scope of the approved priority measures list.

DEFAULT SERVICING

CASE LAW

Foreclosure – Void assignment

CASE NAME: *Hacker v. Homeward Residential, Inc.*
DATE: *08/16/2018*
CITATION: *Court of Appeal, Second District, Division 1, California. 26 Cal.App.5th 270. 236 Cal.Rptr.3d 790*

Trustee for the trust which purportedly held a grant deed to residential property, which had been obtained from a vendor following a failed short sale of property to the trust, brought a post-foreclosure action against numerous mortgage and deed of trust entities, alleging breach of written contracts, breach of the covenant of good faith and fair dealing, wrongful, improper and fraudulent trustee sale, fraud, unfair business practices, cancellation of void instruments, slander of title, declaratory relief, and specific performance. The trial court sustained defendants' demurrers without leave to amend, and the purported trustee, Hacker, appealed.

The appeals court found that Hacker proposed facts sufficient, if true, to show that an August 21, 2008 assignment was void. The Soundview Trust acquired the property via a foreclosure sale on July 6, 2016. Hacker claimed Soundview Trust had no power to foreclose on

the property because it was never the true owner of the DOT.

The Court found that the respondents and the trial court misconstrued Hacker's challenge to the August 21, 2008 assignment as an allegation that the assignment violated the pooling and service agreement ("PSA"). Were this case, the assignment would indeed be voidable under New York and California law. A number of cases have held that assignments which allegedly breach a term or terms of a PSA are voidable rather than void because the beneficiaries, not the borrower, have the right to ratify the trustee's unauthorized acts. In contrast, an assignment by a party that never possessed legal title to the property is void. Hacker's allegation was unequivocally of the latter type.

Hacker contended Option One sold all beneficial interest in the property when it sold the mortgage to the Option One Trust pursuant to the PSA on June 1, 2006. Two years later, on August 21, 2008, AHMSI, as successor in interest to Option One, executed an assignment of the DOT to Soundview Trust, with Deutsche Bank as trustee. Hacker contended this assignment was void because AHMSI had no legal authority to convey an interest in property that it had already sold to the Option One Trust.

The Court found that Hacker successfully alleged facts supporting a claim that the August 21, 2008 assignment was void. As such, he had standing to pursue an action for wrongful foreclosure.

It followed that Hacker also had standing to pursue the remaining claims that derived from his action for wrongful foreclosure.

The judgment was reversed. The trial court was directed to grant Hacker leave to amend the complaint consistent with this opinion.

CASE LAW

Foreclosure – Lost note

CASE NAME: *Matter of Frucella*
DATE: *10/02/2018*
CITATION: *Court of Appeals of North Carolina. --- S.E.2d ----. 2018 WL 4700294*

Respondents executed an Adjustable Rate Note for their home, naming The Lomas & Nettleton Company as lender. Respondents executed a deed of trust on the property to secure the loan. On 5 November 1997, a "Substitution of Trustee" was recorded, providing in part that "Crestar Bank is now the owner and holder of said Note and lien created by the foregoing Deed of Trust[.]" On 21 January 2003, another "Substitution of Trustee" was recorded, providing in part that "SunTrust Bank, Inc. is now the owner and holder of said Note and lien created by the foregoing Deed of Trust."

CitiMortgage, acting as the attorney-in-fact for The Lomas & Nettleton Company, assigned the deed of trust to CitiMortgage. Respondents were then given notice of default by CitiMortgage and a non-judicial foreclosure proceeding was commenced on 20 June 2011, but was dismissed without prejudice on 1 April 2013.

Another non-judicial foreclosure proceeding was commenced on 28 January 2015 and the Clerk of Superior Court entered an Order allowing the foreclosure sale. Respondents appealed to Superior Court. At the hearing, the trial court was presented with two lost note affidavits of April Daniels, employed by CitiMortgage as an Assistant Vice President. One of the affidavits stated that subsequent to the execution of the Loan, the Note was transferred to CitiMortgage and that after the Loan was transferred, the original Note was lost. The other Daniels affidavit stated that: (1) "At the time CitiMortgage, Inc. lost possession of the original Note, such party had the right to enforce the Note and Deed of Trust[,]" (2) "The loss of possession of the Note is not the result of the original Note being assigned, endorsed, or delivered to

another party, cancelled, pledged, hypothecated or otherwise transferred, nor was the loss of possession the result of a lawful seizure of the Note[,]" and (3) "After a good faith, thorough and diligent manual search, the hard copy collateral file pertaining to the Loan (which pursuant to CitiMortgage, Inc.'s regular business practice would be expected to contain the original note) was not located."

The trial court entered an order allowing the foreclosure sale. The Frucellas appealed, maintaining that the trial court erred in permitting the foreclosure sale because CitiMortgage was not the holder of the Note.

The Court found that § 25-3-309 of the NC UCC provides a three-part test of the entitlement to enforce a lost instrument:

A person not in possession of an instrument is entitled to enforce the instrument if (i) the person was in possession of the instrument and entitled to enforce it when loss of possession occurred, (ii) the loss of possession was not the result of a transfer by the person or a lawful seizure, and (iii) the person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

The Court found that the trial court properly concluded that CitiMortgage was the holder in due course of a valid debt and was entitled to proceed with the power of sale foreclosure under the terms of the parties' deed of trust.

Affirmed.

CASE LAW

Foreclosure – Statute of limitations

CASE NAME: *HSBC Bank USA, N.A. v. Crum*
DATE: *10/17/2018*
CITATION: *United States Court of Appeals, Fifth Circuit. --- F.3d ----. 2018 WL 5020609*

HSBC sent Crum a notice of default and notice of acceleration, indicating that his home equity loan would mature on June 10, 2009. During the next few years, Crum filed a Chapter 7 and filed an independent lawsuit seeking to prevent foreclosure. After these issues were resolved, HSBC filed suit in 2014, seeking to foreclose on the property. The trial court granted HSBC's motion for summary judgment. Crum appealed, contending that HSBC was not the holder of the Note and therefore lacked standing, and that HSBC's lawsuit was untimely.

According to HSBC, it owned and held the Note since 2009. Crum claimed, however, that Bank of America assigned the Note and Security Instrument to Nationstar in 2013, indicating that at some point, HSBC had assigned the Note and Security Instrument to Bank of America. HSBC responded that had merely delegated the servicing of the Loan to BAC Home Loans Servicing LP, a subsidiary of Bank of America, on March 1, 2010.

HSBC submitted undisputed evidence that it was the holder and owner of the Note and Security Instrument from 2009. Bank of America and Nationstar were the only parties to a 2013 assignment agreement. HSBC admitted that Bank of America was the servicer of the Note, but there was no evidence that Bank of America ever owned or held the Note or Security Instrument.

Furthermore, even if HSBC had not owned or had any interest in the Deed of Trust, this would not demonstrate that it no longer owned or held the Note, an entirely separate instrument. Because Crum failed to present evidence raising an issue of material fact as to HSBC's ownership of the note, the district court properly granted summary judgment on this issue.

A suit to foreclose on real property must be brought within four years after the cause of action accrues. When a note or deed of trust secured by real property includes an optional acceleration clause, the action accrues when the holder actually exercises its option to accelerate. The Security Instrument included an optional acceleration clause and HSBC first accelerated the Note on June 10,

2009. Unless the limitations period was tolled, the statute of limitations would have expired on June 10, 2013. Thus, to reset the limitations period, HSBC would have had to abandon acceleration prior to that date. The parties agree that HSBC abandoned the acceleration of the loan on October 15, 2013—127 days after the limitations period would have expired.

The trial court held that the limitations period was tolled for 127 days when Crum filed for bankruptcy in June 2010. It also determined that the limitations period was tolled for 500 days when Crum filed a suit to prevent foreclosure. Crum claimed that his bankruptcy suit tolled the statute of limitations for only 126 days, making HSBC's foreclosure suit untimely.

The Court found that application of Texas common law principle requires that the statute of limitations be tolled for a period that includes each day during which HSBC was prevented from foreclosing on the property by the automatic bankruptcy stay. This period includes the day the stay was implemented and the day the stay was lifted, here a total of 127 days. Even when courts speak with some precision regarding the length of a bankruptcy stay, they do not shave the tolling period down to hours or minutes. The district court properly held that HSBC timely filed its foreclosure suit.

Affirmed.

CASE LAW

Foreclosure – FDCPA

CASE NAME: *Mills v. Select Portfolio Services, Inc.*
DATE: *10/19/2018*
CITATION: *United States District Court, S.D. Florida. Slip Copy. 2018 WL 5113001*

According to Plaintiff, Defendant filed a foreclosure lawsuit against Plaintiff. Counsel appeared on behalf of Plaintiff and an order of dismissal was entered in the Foreclosure Action.

After entry of the order of dismissal, Plaintiff's counsel continued negotiating with Defendant on Plaintiff's behalf. Every month after the entry of the order of dismissal, Defendant sent at least one mortgage statement, default letter, mortgage assistance letter, insurance coverage letter, or escrow statement directly to Plaintiff at his residential address. The communications misrepresented the nature and extent of the mortgage loan debt and other amounts allegedly owed. Accordingly, Plaintiff claimed that Defendant violated the FDCPA and the Florida Consumer Collection Practices Act ("FCCPA").

Plaintiff claimed that Defendant violated the FDCPA and the FCCPA by directly communicating with Plaintiff, via written correspondence, knowing that Plaintiff was represented by an attorney with respect to the mortgage loan debt. Defendant argued that its communications were not a debt collection and therefore could not be the basis of a FDCPA or FCCPA violation.

The Court found that mortgage statements sent by servicers to defaulted borrowers that comply with TILA and Regulation Z are not debt collection communications under the FDCPA.

The Mortgage Assistance Letter provided information regarding alternatives to foreclosure. It was not a letter that was generated to demand payment or otherwise collect upon a debt.

However, the escrow letter stated: "This communication from a debt collector is an attempt to collect a debt and any information obtained will be used for that purpose." This language indicated that the escrow letter was a debt collection communication.

Plaintiff's Complaint alleged that Defendant sent "default letters" and "insurance coverage letters" to Plaintiff. However, Plaintiff provided no further information concerning what these letters were, what they sought, how they were debt collection letters, or the false representations contained therein. Accordingly, the Court

granted Defendant's Motion to Dismiss, permitting Plaintiff leave to amend his Complaint.

Plaintiff also asserted claims under the FCCPA and the FDCPA claiming that after entry of the order of dismissal in the Foreclosure Case, Defendant sent communications to Plaintiff misrepresenting the amount of the mortgage loan debt. Defendant argued that it was entitled to dismissal of these counts because Plaintiff failed to comply with the mortgage's pre-suit notice and cure provision ("Paragraph 20") before commencing this action.

The Court found that the notice and cure provision was circumscribed to breaches of provisions, and duties owed, within the mortgage itself. Accordingly, the Court found that Plaintiff was not obligated by Paragraph 20 to provide notice and an opportunity to cure before asserting his claims. Therefore, Defendant's motion to dismiss relating to claims concerning communication to Plaintiff misrepresenting the amount of the mortgage loan debt was denied as to the Mortgage Statements only.

CASE LAW

Repossession – Fair market value

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CASE NAME: *Williams v. American Honda Finance Corporation*
DATE: *10/24/2018*
CITATION: *United States Court of Appeals, First Circuit. 907 F.3d 83*

Williams failed to make payments and Honda repossessed her automobile and sent her a post-repossession notice that advised her of Honda's intent to sell the car at auction, describing her deficiency liability as: "The money received from the sale (after paying our costs) will reduce the amount you owe. If the auction proceeds are less than what you owe, you will still owe us the difference."

After an auction, Honda sent Williams a notice of the sale and her deficiency balance, calculated by subtracting the price obtained at auction from her outstanding loan balance plus costs.

Williams claimed that Honda's notices violated provisions of the UCC, Mass. Gen. Laws ch. 106, §§ 9-614, 9-616, and the Massachusetts consumer protection statute, Mass. Gen. Laws ch. 93A, § 2(A), by advising that her deficiency liability would be calculated using the automobile's sale price obtained at auction (rather than its fair market value). The district court rejected this, noting that Honda's pre-sale notice "track[ed] the safe harbor language in section 9-614(3)." Further, Williams had presented "no evidence that the auction proceeds were less than the [automobile's] fair market value."

On appeal, the Court certified three questions to the Massachusetts Supreme Judicial Court:

1. Whether the "fair market value" of collateral under Mass. Gen. Laws ch. 255B, § 20B, is the fair market retail value of that collateral?

2. Whether, and in what circumstances, a pre-sale notice is "sufficient" under UCC § 9-614(4) and (5), and "reasonable" under UCC § 9-611(b), where the notice does not describe the consumer's deficiency liability as the difference between what the consumer owes and the "fair market value" of the collateral, and the transaction is governed by MVRISA?

3. Whether, and in what circumstances, a post-sale deficiency explanation is "sufficient" under UCC § 9-616 where the deficiency is not calculated based on the "fair market value" of the collateral, and the transaction is governed by MVRISA?

In brief, the Supreme Judicial Court opined that, in disputed cases, a rebuttable presumption exists that the estimated retail-market value of the repossessed collateral is its fair market value in MVRISA-governed transactions. As to the second and third questions, the Supreme Judicial Court concluded that notices provided under sections 9-614 and 9-616 "must describe the [debtor's] deficiency as the difference between the fair

market value of the collateral and the debtor's outstanding balance."

The appeals court agreed with the district court that Williams did not authenticate the sole exhibit—a NADA values printout—that she offered to support her claim that Honda sold her vehicle for less than fair market value. Her challenge to the court's ruling that Honda sold the car for fair market value was therefore waived.

However, the Court found that the post-repossession and post-sale notices must "expressly describe the deficiency as the difference between the amount owed on the loan and the fair market value of the vehicle." Honda's notices to Williams plainly did not provide this necessary express description, and therefore did not comply with the requirements of Mass. Gen. Laws ch. 106, §§ 9-614, 9-616.

Further, the Supreme Judicial Court made it clear that a creditor's use of the UCC safe-harbor language in deficiency notifications is inadequate under Massachusetts law.

The Court rejected Honda's argument that applying the Supreme Judicial Court's interpretation to notices sent before the court announced its decision would violate its "constitutional right to due process." The prospect that a court might read the ambiguous statutory requirements adversely to Honda had been pending since 2014. Yet, in neither the district court nor in this court nor before the Supreme Judicial Court did Honda raise this due process argument. Accordingly, the argument was three-times waived.

The district court's findings that Honda's notices were compliant with Massachusetts law was reversed, and the dismissal of Williams's claims under chapter 93A and Massachusetts' version of the UCC, challenging the adequacy of Honda's notices was vacated, and the case remanded.

CASE LAW

FDCPA – Mortgage statement

CASE NAME: *Shaffer v. Servis One, Inc.* *DATE:* *11/05/2018*
CITATION: *United States District Court, M.D. Florida. Slip Copy. 2018 WL 5785959*

Plaintiff brought claims in federal court following entry of a Florida state court judgment for foreclosure on a mortgage. The Court dismissed with prejudice claims relating to the validity of the debt under the Rooker-Feldman doctrine.

In response, Plaintiff filed her Second Amended Complaint alleging debt collection practices in violation of the FDCPA and the Florida Consumer Collection Practices Act, ("FCCPA").

Plaintiff attached to her Complaint two examples of the communications at issue. One was a letter from BSI titled "Mortgage Statement" and dated July 18, 2016.

The second attached document was a Form 1099-C Cancellation of Debt that lists BSI as the creditor and an "[a]mount of debt discharged" of $354,354.47.

The Court found that Plaintiff's claims were not barred by res judicata or Rooker-Feldman. Plaintiff's claims concerned alleged debt collection activity that followed the filing—and judgment—of the foreclosure action. Similarly, Rooker-Feldman did not bar Plaintiff's claims because Plaintiff's claims were independent from the state court judgment.

However, based on the allegations in Plaintiff's Complaint, including the attached documents, the Court found as a matter of law that BSI's conduct was not related to debt collection under the FDCPA or FCCPA.

The July 18, 2016 letter was a mortgage statement and not debt collection correspondence.

The Federal TILA Regulation Z requires BSI, a servicer, to send monthly mortgage statements. The July 18, 2016 statement, is one such document. While acknowledging it is a monthly mortgage statement that BSI must send, Plaintiff argued the letter "contained language beyond what is required for informational purposes." Yet, in support, she pointed only to the payment coupon at the bottom of the letter, which stated "Please return this portion with your payment."

The Consumer Financial Protection Bureau (the "CFPB") has issued a bulletin providing that a "servicer acting as a debt collector would not be liable under the FDCPA for complying with [monthly mortgage statement] requirements."

BSI's letter simply contains the amount due, payment due date, and delinquency information, all in conformity with TILA requirements. Moreover, this mortgage statement is substantially similar to model form H-30(B) provided by Appendix X to Part 1026 of TILA Regulation Z. As for information not explicitly required by TILA, even the payment coupon is included in the provided H-30(B) template.

The Court also found that BSI's filing of the 1099-C was not debt collection.

There was no indication that BSI's 1099-C was filed in connection with the collection of a debt. A 1099-C does not by itself extinguish debt or even preclude a creditor from pursuing collection. Rather, the filing of a 1099-C and its delivery to the borrower are required when a lender writes off a debt as a loss for accounting purposes.

Plaintiff's Second Amended Complaint dismissed with leave to amend.

CASE LAW

TCPA – Failure to state a claim

CASE NAME: *Rotberg v. Jos. A. Bank Clothiers, Inc.*
DATE: *11/05/2018*
CITATION: *United States District Court, S.D. New York. Slip Copy. 2018 WL 5787480*

Plaintiff sued on behalf of a putative class of individuals who he alleged received certain text messages from Defendants in violation of the TCPA. The Defendants moved to dismiss.

Although Rotberg alleged that he received "several" text messages from Defendants, his TCPA claims were based on just two of those text messages; an "initial marketing text message;" and an opt-out confirmation text sent to Rotberg after he texted the word "stop" to Defendants.

Rotberg alleged that Defendants' text messages were sent using an automatic telephone dialing system.

The Court found that the injuries caused by automated telephone calls—including cost, waste of time, annoyance, and invasion of privacy—were concrete injuries sufficient to confer Article III standing.

The Court also found plausible Rotberg's allegations that Defendants called him using a device with the current capacity to function as an autodialer. Defendants sent him a set of terms and conditions in which they requested that Rotberg "agree to receive autodialed messages." This, and other alleged indicators, rendered plausible Rotberg's allegation that their device was capable of functioning as one.

Rotberg concession that he had given his phone number to Defendants prior to receiving the initial marketing text message appeared to the Court to be sufficient to establish his prior express consent to receive non-telemarketing autodialed calls at that number. But Rotberg argued that the initial text message Defendants sent to him constituted telemarketing, and that when he

gave his phone number to Defendants he did not provide the express written consent the TCPA requires prior to sending such telemarketing messages.

Rotberg's only specific allegation regarding the content of the "initial marketing text message" was that it referred recipients to a webpage which consisted of the terms and conditions required for participation in Defendants' automated mobile marketing program. But a caller seeking out a consumer's express written consent to send subsequent telemarketing or advertising texts is not as a matter of law already engaged in telemarketing.

The second text message that Defendants allegedly sent in violation of the TCPA was the opt-out confirmation message. However, the FCC held that permissible opt-out confirmation texts would be "limited to texts that: 1) merely confirm the consumer's opt-out request and do not include any marketing or promotional information; and 2) are the only additional message sent to the consumer after receipt of the opt-out request."

The First Amended Complaint references only a URL contained within that text, which Plaintiff alleged led to a webpage containing a blank form under the header "Consumer Text Messaging Help Desk." This form by itself was clearly intended to do nothing more than provide consumers with a means of contacting Defendant for help, and thus is akin to providing instructions as to how a consumer can opt back in, which falls reasonably within consumer consent.

Defendant's permissible decision to include "information or instructions" in an opt-out confirmation text did not become unlawful because those instructions were housed on a web platform that peripherally contained nondescript links to other portions of the website.

Defendants' motions to dismiss granted. Plaintiff was granted leave to replead.

CASE LAW

RESPA – Qualified written request

CASE NAME: *Moore v. Wells Fargo Bank, N.A.*
DATE: *11/07/2018*
CITATION: *United States Court of Appeals, Seventh Circuit. --- F.3d ----. 2018 WL 5816723*

Terrence Moore purchased the home he shared with his wife with a mortgage from Deutsche Bank, serviced by Wells Fargo. Mrs. Moore used an inheritance to help buy the house, but was not a party to the title, the mortgage, or the note.

After Mr. Moore failed to comply with the terms of a second modification, on November 13, 2012, the state trial court entered a judgment of foreclosure. Mr. Moore did not appeal.

A sheriff's sale was rescheduled numerous times. Mr. Moore filed Chapter 13 and failed to pay on a third modification agreement. The stay was lifted and the sheriff's sale was rescheduled.

Mr. Moore converted his Chapter 13 into a Chapter 7, triggering another stay. After discharge, the sheriff's sale was rescheduled for October 11, 2016.

On August 15, 2016, Mr. Moore sent a letter to Wells Fargo asking twenty-two questions. Wells Fargo treated it as a qualified written request, confirmed receipt and advised it would respond on September 30—the last day to submit a written response within the 30-business-day deadline.

On September 28, the Moores filed a motion in state court to reopen the 2012 foreclosure and to request an indefinite stay of the sheriff's sale.

The same day, two days before Wells Fargo's response was due, the Moores filed this action in federal court. In both courts, the Moores alleged that Wells Fargo violated RESPA and Wis. Stat. § 224.77 by failing to respond to the qualified written request.

On September 30, Wells Fargo mailed a three-page letter with 58 pages of attachments. The response addressed most of Mr. Moore's questions, but not all of them, because some questions were "too broad," inviting Mr. Moore to provide further details. Mr. Moore did not follow up.

The state court dismissed the Moores' suit. The sheriff's sale took place on November 29, 2016. Mr. Moore filed bankruptcy again. In February 2018, the district court granted Wells Fargo's motion for summary judgment. The Moores appealed.

The Court first found that Mrs. Moore did not have standing, but Mr. Moore did. He was the borrower, he alleged he was injured by lacking information to fight the state court case, that this caused him to be "substantially emotionally disturbed," and that Wells Fargo caused this harm.

But the Court found that a borrower cannot recover damages when the only harm alleged is that the response to a qualified written request did not contain information he wanted to fight a state-court foreclosure he already lost. Even if Wells Fargo's response violated RESPA, there was no evidence of any harm due to this violation. While he adequately alleged an injury for the purpose of standing, the evidence did not survive summary judgment on the merits of those claims.

The only out-of-pocket expense Mr. Moore claimed were due to the alleged violations was $900 paid to an attorney to review Wells Fargo's response. Section 2605(f) required Mr. Moore to provide evidence of "actual damages to the borrower as a result of the failure" of Wells Fargo to comply with RESPA. This causal connection is a critical element when bringing a RESPA claim.

Also, the obvious sources of Mr. Moore's stress were that he couldn't make timely payments, that the lender had won a judgment of foreclosure, and that sale and eviction were imminent.

Mr. Moore argued that the information he requested would have given him a greater chance of success in state court. This theory relied too much on speculation about what a state court might have done under other, unknowable circumstances, to qualify as actual harm under RESPA.

Finally, most of Mr. Moore's claims under state law were barred by the Rooker-Feldman doctrine. To find in favor of Mr. Moore, the Court would be required to contradict directly the state court's decisions by finding that Deutsche Bank was not entitled to the final judgment of foreclosure. Even if Mr. Moore's claims were not barred under Rooker-Feldman, Federal courts could not award Mr. Moore damages without making findings that would directly undermine the state court's foreclosure judgment.

Affirmed.

CASE LAW

Foreclosure – Statute of limitations

CASE NAME: *Ditech Financial, LLC v. Corbett*
DATE: *11/16/2018*
CITATION: *Supreme Court, Appellate Division, Fourth Department, New York. --- N.Y.S.3d ----. 2018 WL 6006682*

Plaintiff commenced a mortgage foreclosure action in January 2016, alleging that the defendants defaulted by failing to pay their monthly mortgage installments. Plaintiff moved for summary judgment. In opposition to plaintiff's motion, defendants contended that the foreclosure action was time-barred because the debt was accelerated in 2010 by plaintiff's predecessor in interest. The New York Supreme Court granted the motion.

On appeal, the Court rejected defendants' contention that a January 2010 letter to defendants from plaintiff's predecessor in interest accelerated the debt and thus that the statute of limitations began to run on the entire debt at that time. The 2010 letter, which, among other things,

advised defendants of their default and of the lender's intention to accelerate the debt in the future if certain preconditions were not met, fell far short of providing clear and unequivocal notice to defendants that the entire mortgage debt was being accelerated. Inasmuch as a letter discussing acceleration as a possible future event does not constitute an exercise of the mortgage's optional acceleration clause, the Court held that the trial court properly granted plaintiff's motion.

CASE LAW

Bankruptcy – Bifurcation

CASE NAME: *In re Keokuk*
DATE: *11/20/2018*
CITATION: *United States Bankruptcy Court for the Eastern District of Kentucky, Frankfort Division, 2018 Bankr. LEXIS 3694*

The Debtor filed chapter 13 and scheduled real property and a mobile home located thereon. 21st Mortgage filed a proof of claim for $87,531.45 based on a note secured by liens on the Real Estate and the Mobile Home, which was personal property under Kentucky law.

The Debtor's initial plan valued 21st Mortgage's secured claim at $20,000.00. 21st Mortgage objected to the proposed cram down value. The parties reached an agreed order that "the value of the [Mobile Home] is $36,000.00 and the value of the [Real Estate] is $22,500.00 for a total value of $58,500.00."

The Debtor filed an Amended Plan, but instead of merely adjusting the secured value to the agreed secured value, the Debtor proposed to: (i) retain the Real Estate in exchange for monthly payments based on the agreed value of the Real Estate; and (ii) surrender the Mobile Home.

The Debtor proposed to bifurcate the secured claim into two secured claims. The first secured claim, based on the Real Estate, was treated under the cram down option in § 1325(a)(5)(B). The second secured claim, based on the Mobile Home, was to be surrendered pursuant to § 1325(a)(5)(C).

The Court found it questionable whether a debtor may split a secured claim. Section 1325(a) requires action for "each allowed secured claim" and the reference to "such claim" in subsections (A), (B), and (C) clearly refers to that phrase. This suggests a debtor must treat each allowed secured claim under one of the three options in § 1325(a)(5).

However, a definitive answer was not required because the current plan was not confirmable. The Debtor's proposed surrender of the Mobile Home was not the equivalent of a distribution of $36,000.00, so there was no basis on which to reduce the allowed secured claim. Therefore, "the value, as of the effective date of the plan," on which the cram down payments are based in § 1325(a)(5)(B)(ii) was still the total agreed secured claim, $58,500.00. The proposed Amended Plan only proposed to pay an allowed secured claim equal to $22,500.00.

If 21st Mortgage repossessed and liquidated the Mobile Home, then the allowed secured claim would be reduced. Until then, providing value based on the total amount of the allowed secured claim was required. Therefore, the Amended Plan was not confirmable.

The Debtor offered an alternative reading of the Amended Plan that would treat the surrender as a distribution of property under § 1325(a)(5)(B)(ii). This proposal differed from a proposal to surrender the collateral because the distribution of property under § 1325(a)(5)(B)(ii) contemplates a transfer of title and reduction of the debt regardless of whether the creditor liquidates the collateral. This would allow the Debtor to offset the agreed value of the Mobile Home against the allowed secured claim, making the proposed value of the periodic payments for the Real Estate sufficient because that was the remaining value of the allowed secured claim.

The Debtor's offer to read the Amended Plan in a different manner was rejected. The first and most obvious reason

was the need to have a plan that sets out exactly what is intended. This would avoid conflict if interpretation is required during the five-year term. Also, it was not fair to hold 21st Mortgage to the valuations in the Agreed Order after such a drastic change in plan terms. Further, it was not clear the Debtor's proposal would satisfy all parts of § 1325(a)(5)(B).

21st Mortgage's Supplemental Objection was sustained and confirmation of the Debtor's Amended Plan denied.

LENDING

CASE LAW

Escrow – Interest

CASE NAME: *Bank of America, N.A. v. Lusnak*
DATE: *11/19/2018*
CITATION: *Supreme Court of the United States. --- S.Ct. ----. 2018 WL 4006331*

The U.S. Supreme Court denied the petition for writ of certiorari filed by Bank of America, N.A.

The Bank sought to appeal the decision of the United States Court of Appeals, Ninth Circuit, which held that the National Bank Act did not preempt the requirement in Cal. Civ. Code § 2954.8(a) that banks pay interest on mortgage escrow funds.

BALLOT MEASURE

California
Veteran's housing

Ballot Measure CA 4 2018. Unofficially approved by the voters 11/6/2018.

2017 CA S 3 was signed by the governor 9/29/2017. That bill enacted the Veterans and Affordable Housing Bond Act of 2018, which authorizes the issuance of bonds in the amount of $4,000,000,000 pursuant to the State General Obligation Bond Law. Of the proceeds from the sale of these bonds, $1,000,000,000 would be used to provide additional funding for the program for farm, home, and mobilehome purchase assistance for veterans.

The bill provided for submission of the bond act to the voters at the November 6, 2018, statewide general election in accordance with state law.

The bill has been unofficially approved by the voters.

Cal. Health & Safety Code § 54006 provides:

The Affordable Housing Bond Act Trust Fund of 2018 is hereby created within the State Treasury. It is the intent of the Legislature that the proceeds of bonds (exclusive of refunding bonds issued pursuant to Section 54026) be deposited in the fund and used to fund the housing-related programs described in this chapter. The proceeds of bonds issued and sold pursuant to this part for the purposes specified in this chapter shall be allocated in the following manner:

(g) Three hundred million dollars ($300,000,000) to be deposited in the Self-Help Housing Fund established pursuant to Section 50697.1. The moneys in the fund shall be available for the CalHome Program authorized by Chapter 6 (commencing with Section 50650) of Part 2, to provide direct, forgivable loans to assist development projects involving multiple home ownership units, including single-family subdivisions, for self-help mortgage assistance programs, and for manufactured homes. These funds may also be expended for any authorized purpose of this program. At least thirty million dollars ($30,000,000) of the amount deposited in the Self-Help Housing Fund shall be used to provide grants or forgivable loans to assist in the rehabilitation or replacement, or both, of existing mobilehomes located in a mobilehome or manufactured home community. These funds may also be used to provide technical assistance pursuant to Section 54007. Any funds not encumbered for the purposes of this subdivision by November 6, 2028, shall revert for general use in the Multifamily Housing Program authorized by Chapter 6.7 (commencing with Section 50675) of Part 2, unless the Department of

Housing and Community Development determines that funds should revert sooner due to diminished demand.

BULLETIN
Pennsylvania
Base figure

Issued 11/2/2018.

Adjustment to Definition of ''Base Figure'' in the Loan Interest and Protection Law.

The Department of Banking and Securities has determined that the current base figure of $250,324 adjusted for annual inflation using the ''Consumer Price Index—All Urban Consumers: U.S. All Items 1982—84 =100'' published by the United States Department of Labor Bureau of Labor Statistics results in a base figure of $256,023. This new base figure will be effective January 1, 2019, for the calendar year 2019.

(Note: according to 41 Pa. Stat. Ann. § 101, “Residential mortgage” means an obligation to pay a sum of money in an original bona fide principal amount of **the base figure** or less, evidenced by a security document and secured by a lien upon real property located within this Commonwealth containing two or fewer residential units or on which two or fewer residential units are to be constructed and shall include such an obligation on a residential condominium unit.)

BULLETIN
BCFP
HOEPA

HOEPA Rule - Small entity compliance guide.

November 2018.

Summary of Changes.

The guide has been updated to reflect:

The process for contacting the Bureau with informal inquiries (Section 1.3); and

Section 107 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (2018 Act), which affects what loan originator compensation must be included when calculating points and fees by broadening and expanding an exemption for manufactured home retailers (Section 3.8.2).

The update adds footnotes to clarify that the guide has not been updated to reflect Section 109(a) of the 2018 Act (Sections 1 and 4.1).

The update clarifies effective dates of the September 2015 Final Rule and the March 2016 Interim Final Rule (Section 2.1).

The update also reformats the description of how to calculate points and fees (Section 3.8).

The update revises internal cross references to refer to the guide’s section numbers and makes other miscellaneous administrative changes in various sections.

PRESS RELEASE
BCFP
Regs Z & M - Thresholds

Issued 11/21/2018

Agencies Announce Dollar Thresholds in Regulations Z and M for Exempt Consumer Credit and Lease Transactions.

The Federal Reserve Board and the Bureau of Consumer Financial Protection (Bureau) announced the dollar thresholds in Regulation Z (Truth in Lending) and Regulation M (Consumer Leasing) that will apply for determining exempt consumer credit and lease transactions in 2019.

Based on the annual percentage increase in the CPI-W as of June 1, 2018, the protections of the Truth in Lending Act and the Consumer Leasing Act generally will apply to

consumer credit transactions and consumer leases of $57,200 or less in 2019. However, private education loans and loans secured by real property or personal property expected to be used as a dwelling (such as mortgages) are subject to the Truth in Lending Act regardless of the amount of the loan.

PRESS RELEASE
FHFA
Conforming loan limits

Issued 11/27/2018.

FHFA Announces Maximum Conforming Loan Limits for 2019

Fannie Mae and Freddie Mac Baseline Limit Will Increase to $484,350

The Federal Housing Finance Agency (FHFA) announced the maximum conforming loan limits for mortgages to be acquired by Fannie Mae and Freddie Mac in 2019. In most of the U.S., the 2019 maximum conforming loan limit for one-unit properties will be $484,350, an increase from $453,100 in 2018.

PROPOSED RULE
OCC, Federal Reserve Board, FDIC
Appraisal thresholds

The OCC, Board, and FDIC (collectively, the agencies) are inviting comment on a proposed rule to amend the agencies' regulations requiring appraisals for certain real estate related transactions. The proposed rule would increase the threshold level at or below which appraisals would not be required for residential real estate-related transactions from $250,000 to $400,000. Consistent with the requirement for other transactions that fall below applicable thresholds, regulated institutions would be required to obtain an evaluation of the real property collateral that is consistent with safe and sound banking practices. The proposed rule would make conforming changes to add transactions secured by residential property in rural areas that have been exempted from the agencies' appraisal requirement pursuant to the Economic Growth, Regulatory Relief and Consumer Protection Act to the list of exempt transactions. The proposed rule would require evaluations for these exempt transactions. Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, the proposed rule would amend the agencies' appraisal regulations to require regulated institutions to subject appraisals for federally related transactions to appropriate review for compliance with the Uniform Standards of Professional Appraisal Practice.

FINAL RULE
OCC, Federal Reserve Board, FDIC
Appraisals - Higher-priced mortgage loans

59272 83 Fed. Reg. 59272 (November 23, 2018)

The OCC, the Board, and the BCFP are finalizing amendments to the official interpretations for their regulations that implement section 129H of the Truth in Lending Act (TILA). Section 129H of TILA establishes special appraisal requirements for ''higher-risk mortgages,'' termed ''higher-priced mortgage loans'' or ''HPMLs'' in the agencies' regulations. The OCC, the Board, the Bureau, the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), and the Federal Housing Finance Agency (FHFA) (collectively, the Agencies) issued joint final rules implementing these requirements, effective January 18, 2014. The Agencies' rules exempted, among other loan types, transactions of $25,000 or less, and required that this loan amount be adjusted annually based on any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W). If there is no annual percentage increase in the CPI–W, the OCC, the Board, and the Bureau will not adjust this exemption threshold from the prior year. However, in

years following a year in which the exemption threshold was not adjusted, the threshold is calculated by applying the annual percentage increase in the CPI–W to the dollar amount that would have resulted, after rounding, if the decreases and any subsequent increases in the CPI–W had been taken into account. Based on the CPI–W in effect as of June 1, 2018, the exemption threshold will increase from $26,000 to $26,700, effective January 1, 2019.

LICENSING

EMERGENCY RULE
Indiana
Installers – Criminal history

Effective 11/1/2018, expiring 1/30/2019, this uncodified rule implements Ind. Code § 25-1-1.1-6 regarding disqualifying criminal history for licensure by the manufactured home installer licensing board, and includes an explicit list of 171 crimes that will disqualify an individual from receiving a license.

An applicant for licensure who has a disqualifying criminal history may still be granted a license based on the criteria stated in Ind. Code § 25-1-1.1-6(f).

This document and Ind. Code § 25-1-1.1-6 do not limit the authority of the board to issue a license on probation if appropriate under Ind. Code § 25-1-11-19 or any other applicable statute.

The fee for a petition under Ind. Code § 25-1-1.1-6(h) for a determination as to whether the individual's misdemeanor or felony conviction will disqualify the individual from receiving a license or certification shall be twenty-five dollars ($25).

EMAIL
Texas
Education - Registration

Issued 11/13/2018.

TDHCA Manufactured Housing Announcement.

License holders and potential license holders may register and pay for their required License Education Class(es) online. Below is the link to the Online Transactions webpage and the link to the enrollment page.

Webpage:

http://www.tdhca.state.tx.us/mh/online-transactions.htm

Licensing Education Class Enrollment Page:

https://public.tdhca.state.tx.us/mh_pubp/t_mh_online_lec_registration.lec_reg.show

EMAIL
Texas
Criminal history

Issued 12/3/2018.

TDHCA Manufactured Housing Announcement.

RE: NOTICE OF POTENTIAL INELIGIBILITY OF LICENSE.

Applicants applying for an occupational licensee under the Texas Manufactured Housing Standards Act (TEX. OCC. CODE, Chapter 1201) may be ruled ineligible if they have acquired a criminal record which may include a conviction, deferred adjudication, plead guilty, or nolo contendere for any felony or misdemeanor offense, other than a Class C Misdemeanor for traffic violations, during the five-year period preceding the application date that, in the opinion of the Director, makes the applicant unfit for licensing.

In determining whether an applicant should be issued a license, the Director shall consider the nature and seriousness of the crime; the relationship of the crime to the intended manufactured housing business activity; the extent to which a license holder might engage in further criminal activity of the same or similar type as that in which the applicant previously had been involved; the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the functions and responsibilities of the license holder's occupation or industry; and whether the offenses were defined as crimes of moral turpitude by statute or common law, from Class A misdemeanors to first, second, and third degree felonies carrying fines and/or imprisonment or both. Special emphasis shall be given to the crimes of robbery, burglary, theft, embezzlement, sexual assault, and conversion.

In addition to the factors above, the Department, in determining the present fitness of a person who has a criminal record, may consider the extended nature of the person's past criminal activity; the age of the person at the time of the commission of the crime; the amount of time that has elapsed since the person's last criminal record; the conduct and work activity of the person prior to and following the criminal record; and evidence of the person's rehabilitation or attempted rehabilitation effort while incarcerated or following release.

Per Section 53.102 of the Texas Occupations Code, a person may request a licensing authority to issue a criminal history evaluation letter regarding the person's eligibility for a license issued by that authority if the person is enrolled or planning to enroll in an educational program that prepares a person for an initial license or is planning to take an examination for an initial license; and has reason to believe that the person is ineligible for the license due to a conviction or deferred adjudication for a felony or misdemeanor offense. The request must state the basis for the person's potential ineligibility.

EMAIL

Texas

Warranty responsibilities

Issued 12/4/2018.

TDHCA Manufactured Housing Announcement.

In our continued effort to promote self compliance through education, the Manufactured Housing Division has added a new video to our Industry Series on our website. The latest video titled "Warranty Orders" is designed to help license holders understand their responsibilities should they be issued a warranty order by the Division.

All of the Division's videos can be viewed either at our website at http://www.tdhca.state.tx.us/mh/videos.htm or at our YouTube channel at https://www.youtube.com/channel/UCPB2-HFiKES25ltKE25Lx6A. Please subscribe to our YouTube channel so you can be the first to view new videos.

BULLETIN

BCFP

Loan originators

Loan Originator Rule - Small entity compliance guide.

November 2018.

Summary of Changes, updated to reflect:

Section 107 of the Economic Growth, Regulatory Relief, and Consumer Protection Act, which broadened an exemption for certain employees of retailers of manufactured homes and extended the exemption to certain retailers of manufactured or modular homes and their employees (Sections 1, 2.3, 3.2, and 3.4);

The process for contacting the Bureau with informal inquiries about the Loan Originator Rule (Section 1.3); and

That the TILA-RESPA Integrated Disclosure Rule has taken effect since the publication of the prior version of this guide (Sections 5.8 and 5.12).

The Summary deletes text that compares and contrasts the Bureau's loan originator rule to the Board's loan originator rule because the Bureau's loan originator rule has been in effect for a significant amount of time (Sections 5.1., 5.3, 5.5, 5.7, 5.9, 5.10, 9 and 9.5 of the prior version).

Internal cross references have been revised to refer to sections of this guide, makes miscellaneous changes to clarify that the Loan Originator Rule has taken effect since the publication of the original version of this guide; and makes miscellaneous administrative changes in various sections.

The Summary notes that, on May 24, 2018, the President signed the Economic Growth, Regulatory Relief, and Consumer Protection Act (2018 Act). Section 107 of the 2018 Act: (1) broadened an exemption in the Truth in Lending Act for certain employees of retailers of manufactured homes; and (2) extended the exemption to certain retailers of manufactured or modular homes and their employees.

As of that date, a retailer of manufactured or modular homes or an employee of such a retailer is not a loan originator if the retailer or employee:

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

(II) discloses to the consumer –

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

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

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

MANUFACTURING

FINAL RULE

HUD

Park models

83 Fed. Reg. 57677 (11/16/2018).

Effective 1/15/2019, this rule amends 24 CFR 3282.

The rule revises the definition of recreational vehicle to clarify the types of recreational vehicles exempted from 24 CFR parts 3280 and 3282. In the past, both consumers and manufacturers of recreational vehicles have questioned whether certain recreational vehicles are subject to HUD's Construction and Safety Standards, codified in 24 CFR part 3280 (the HUD Code), and HUD's Manufactured Home Procedural and Enforcement regulations, codified in 24 CFR part 3282. This rule will provide that a recreational vehicle is exempted from HUD's Manufactured Home Construction and Safety Standards and its Manufactured Home Procedural and Enforcement regulations if the unit is built in conformance with either NFPA 1192-15, Standard on Recreational Vehicles, or ANSI A119.5-15, Park Model Recreational Vehicle Standard.

Under this rule, self-propelled RVs qualify for the RV exemption, insofar as they meet all three RV exemption criteria by definition. For towable RVs, however, the standard for the RV exemption is clarified to provide that the RV must be designed, built, and certified in accordance with one of two national standards: NFPA 1192-15, Standard for Recreational Vehicles; or ANSI A119.5-15, Park Model Recreational Vehicle Standard. These standards are already being used by the Recreation Vehicle Industry Association (RVIA) in its standards, inspection, and self-certification process. HUD concludes

that the exemption criteria for towable RVs impose negligible costs on the market of RV manufacturers and consumers.

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