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!

Happy New Year! We hope you had a wonderful holiday season and are starting the New Year off on the right foot.

In the December Update, we have a little something for everyone. There are a few community court decisions of interest, including a case out of Washington state holding a trailer is a "park model" subjecting the community to the Manufactured/Mobile Home Landlord-Tenant Act.

There are also some updates regarding servicing, installation and lending. In addition, the number of TCPA decisions continues to multiply. This and more, so read on.

Finally, if you have just gotten used to calling the Bureau the BCFP, time to switch back to the CFPB. The CFPB's new director was confirmed and will not move forward with the name change.

IN THIS ISSUE

Contents

COMMUNITIES

CASE LAW

Written agreement – Park model

CASE NAME: *Allen v. Dan and Bill's RV Park*
DATE: *10/16/2018*
CITATION: *Court of Appeals of Washington, Division 2. 428 P.3d 376*

Edna Allen filed a complaint against Dan and Bill's RV Park with the Manufactured Housing Dispute Resolution Program (the Program), alleging that the Park violated the Manufactured/Mobile Home Landlord-Tenant Act (MHLTA) by failing to provide her with a written rental agreement and improperly raising her rent. The Program notified the Park that it had violated the MHLTA. The Park disputed that it was a mobile home park.

The Office of Administrative Hearings (OAH) determined that the MHLTA did not apply to the Park because the Park contained only one "park model" and, therefore, was not a mobile home park. The Program and Allen appealed. The superior court concluded that the MHLTA applied because the Park contained two or more "park models," and reversed the OAH decision. The Park appealed.

The Court found that under the MHLTA, "park model" is "a recreational vehicle intended for permanent or semi-permanent installation and is used as a primary residence." Accordingly, Allen's trailer was a "park model." Allen intended to live in her trailer in the Park permanently; had lived in the trailer continuously for several years; had not moved her trailer; and had immobilized her trailer. Allen's trailer was intended to be fixed in position for use, continuously, without fundamental or marked change. Allen's trailer was her primary residence.

The Court also found that the OAH erred by concluding that another trailer was not a "park model." Shinkle's trailer was a recreational vehicle under the MHLTA, intended for semi-permanent installation. Shinkle had lived in his trailer in the Park for about five years; had no plans to leave the Park; had never relocated, not even when the Park was threatened with flooding; had built a rock wall and planted flowers around his trailer; and had a small deck that was not attached to his trailer. These findings showed that Shinkle's trailer was intended to be fixed in position for use for an indefinite time and partly permanent. As a result, Shinkle's trailer was intended for semi-permanent installation. Therefore, Shinkle's trailer was also a "park model" under the MHLTA and the OAH erred in concluding that there was only one "park model" in the Park. Thus, the OAH also erred by concluding that the Park was not a mobile home park under the MHLTA.

The Court further found that the MHLTA applies when there is a rental agreement between a mobile home park landlord and a mobile home lot tenant where the tenant has no ownership interest in the property and the property's uses are referred to as a part of the rent structure paid by the tenant. The MHLTA requirements were met here.

Because OAH concluded that the Park did not violate the MHLTA based on the erroneous conclusion that the MHLTA did not apply to the Park, the Court remanded to the OAH for determination of whether the Park violated the MHLTA.

The Court also reversed the award of attorney's fees to Allen, fining that, although the reason for Allen's request for dispute resolution may have come from a potential violation of the MHLTA, this particular action arose out of and was initiated under the dispute resolution statute.

Editor's note: The statute in question, Revised Code of Washington § 59.20.030(14) & (17) provides:

(14) "Park model" means a recreational vehicle intended for permanent or semi-permanent installation and is used as a primary residence;

* * * *

(17) "Recreational vehicle" means a travel trailer, motor home, truck camper, or camping trailer that is primarily

designed and used as temporary living quarters, is either self-propelled or mounted on or drawn by another vehicle, is transient, is not occupied as a primary residence, and is not immobilized or permanently affixed to a mobile home lot.

Counsel for the Park notes: "In short, the Opinion confirms that if an RV is any tenant's primary residence, it is a "park model" that is subject to the MHLTA. It does not matter whether the RV is "immobilized or permanently affixed to a mobile home lot" as stated in RCW 59.20.030(17); all the tenant must do is subjectively intend that the RV "be fixed in position for use or lasting for an indefinite time in position for use" to satisfy the definition of "park model" in RCW 59.20.030(14)."

CASE LAW
Written agreement – Park model

CASE NAME: *Agan v. Krambeck*
DATE: *12/5/2018*
CITATION: *Court of Appeals of Iowa. Slip Copy (Table, Text in WESTLAW), Unpublished Disposition 2018 WL 6418729*

Agan sent her tenants, Tammy and Greg Krambeck, a three-day notice to quit their residence. On it, Agan wrote "clear and present canger (sic)." She also included a handwritten narrative, which stated:

"Tammy screaming from inside the trailer that Greg has bruised her, he beat me, call the police. The police were contacted and she declined to show evidence of abuse. This occurrence is very frequent with Greg chasing Tammy outside. The neighbors/tenants are exposed to the domestic assault daily. Children reside in the mobile home park and should not be exposed to this exchange & physical violence."

The same day, Agan sent by certified mail a second notice, titled "3 day termination notice to tenant," with Agan again adding a handwritten note, stating, "clear and present danger."

Agan filed an original notice and petition for forcible entry and detainer (FED). Agan stated she was demanding possession of the rental home, as "[t]he defendants have been advised that I am terminating tenancy as they are causing clear and present danger by exposing our other mobile home tenants to the screaming, yelling and physical abuse that they display. The police have been there many times."

Neither Tammy nor Greg appeared and the small claims court entered a default judgment against the Krambecks and issued a writ of removal and possession, formally evicting them.

Tammy filed a motion to set aside the default judgment, alleging neither she nor Greg attended the hearing on the FED action because of her medical condition and claiming she had a number of defenses and counterclaims.

The small claims court determined it did not have jurisdiction to consider the motion to set aside the default judgment, as more than fifteen days had passed since Agan filed her FED action.

Tammy appealed to the district court, which denied Tammy's motion. Tammy again appealed.

The Court found that Iowa Code § 562A.27A(1) provides that, if a tenant has created or maintained a threat constituting a clear and present danger to the health or safety of other tenants, the landlord's notice must state the specific activity causing the clear and present danger, and set forth specified language to include certain exemption provisions available to the tenant.

The Court found that the district court erred when it denied Tammy's challenge to the notice and ruled that Tammy failed to take the actions listed in the exemption provisions. According to the Court, whether Tammy took the actions outlined to cure the alleged clear and present danger and whether she was advised of having the right to do so were two separate questions. The statute requires that all written notices of termination and notices to quit provide the right-to-cure language; the statute does not allow the individual landlord to make the determination whether their tenant is able to cure.

Because the notice provided to Tammy failed to include the necessary right-to-cure language, the small claims court lacked jurisdiction to decide the FED action and enter the default judgment.

Reversed and remanded for dismissal.

CASE LAW
Rent – Installation

CASE NAME: *Chodosh v. Palm Beach Park Ass'n*
DATE: *12/17/2018*
CITATION: *Court of Appeal, Fourth District, Division 3, California. Not Reported in Cal.Rptr. 2018 WL 6599824*

A group of seven appellants who had resided in the Palm Beach mobilehome park in San Clemente appealed from a single judgment in which each was held individually liable to the Palm Beach Park Association (PBPA) for unpaid rent on their spaces. Each appellant faced liability in varying amounts, ranging from $82,000 to about $160,000.

The Court found that Cal. Code Regs., tit. 25, § 1102(d), puts the onus on the park operator to police the installation and use of units within the park to assure compliance with chapter 2 of Division 1, of Title 25. It is not a passive matter.

Here, it appeared that the PBPA (or perhaps even its predecessor in interest) allowed units to be both installed and maintained without installation permits.

Thus, the situation was analogous to that in *Espinoza v. Calva* (2008) 169 Cal.App.4th 1393, in which the court squarely held that a landlord could not collect rent when there had been no certificate of occupancy. "The absence of certificate of occupancy rendered the lease illegal."

However, there is an exception for recreational vehicles. In this case, it was undisputed that there was no certificate of occupancy or mobilehome installation acceptance showing any of the units owned by the seven appellants were properly installed. The Court did not know, on the trial court record, whether the appellants' units were "mobilehomes," as distinct from RV's, within the definition of the Health and Safety Code. That depended on an issue of fact: Whether those units exceeded 320 square feet. (See § 18008, subd. (a) [defining mobilehome as structure exceeding 320 square feet.)

Assuming appellants' units do exceed 320 square feet, the absence of either a certificate of occupancy or a statement of mobilehome installation acceptance was a defense to the PBPA's claim for unpaid rent. The Court thus reversed the judgment against the seven appellants and remanded the case for further proceedings to determine the applicability of the regulations cited above. If it turns out that a unit does not exceed 320 square feet, the judgment against that unit owner must be reinstated.

ADOPTED RULE
Iowa
Utilities - Disconnection

Effective 1/9/2019, this rule amends Iowa Admin. Code r. 199-20.4(15)"d"(5) to provide that a utility shall make a diligent attempt to inform the landlord at least 48 hours prior to disconnection of service to a tenant.

ADOPTED RULE
Iowa
Water service tax

Effective 2/6/2019, this rule adopts Iowa Admin. Code r. 701-97.1 thru .9 to administer the water service excise tax enacted by 2018 Iowa Acts, Senate File 512. Specifically, these rules implement sections 10 through 17 of Senate File 512, which exempt certain sales of water from sales tax and create Iowa Code Chapter 423G, imposing a water service excise tax on the sales price from the sale or furnishing of water service.

The water service excise tax applies to the sale of water by piped distribution to consumers or users, including sales of accompanying services that are integral to furnishing water by piped distribution, even if the water service and accompanying services are billed separately.

The rule includes: No sale of water service for compensation occurs where water service is not sold for a separately itemized or identifiable price and is incidental to the rental of real property.

Example: Water service sold with real estate rental for one nonitemized price. A manufactured housing community (MHC) owner owns a well and pipes water to the lots. The MHC owner charges tenants $500 per month for each lot rental. Water from the well is included in the $500 rental charge. The MHC owner does not do any of the following: charge a flat water fee, charge tenants based on their actual water used, or offer comparable lots at a lower price that do not have access to water service. The MHC owner is not required to collect or remit water service excise tax because water is not being furnished for compensation; it is incidental to the rental of real property.

Example: Water service sold with real estate rental for one nonitemized price. A manufactured housing community (MHC) purchases water from a city water utility and distributes the water to each lot in the community through a system of pipes. The city meters the MHC's use of water each month and charges the MHC for the water service and the applicable water service excise tax. The MHC charges its tenants $500 for lot rental. As in the previous example, the MHC owner does not do any of the following: charge a flat water fee, charge tenants based on their actual water used, or offer comparable lots at a lower price that do not have access to water service. The MHC owner is not required to collect or remit water service excise tax because water is not being furnished for compensation; it is incidental to the rental of real property.

ADOPTED RULE
New Jersey
Discrimination - Advertising

😐

Effective 12/17/2018, this rule amends N.J. Admin. Code § 13:9-1.1, Discriminatory advertising regarding realty, to include “pregnancy, breastfeeding,” and “or liability for service in the Armed Forces of the United States.” as terms which any preference, limitation, specification or discrimination may not be expressed in any print or electronic notice, listing, statement, sign or advertisement regarding the sale, lease, sub-lease, rental or assignment of any real property, overtly or subtly, or directly or indirectly.

ADOPTED RULE
Oregon
Weatherization assistance

🙂

Effective 12/21/2018, this rule adopts Or. Admin. R. 813-205-0000, -0005, -0020, -0030, -0040, -0050, -0051, -0060, -0080, -0082 to adopt the State Plan for the Weatherization Assistance Program and repeal an inapplicable fee rule.

The rule provides that "Dwelling unit" means real or personal property within Oregon that is inhabited as the primary residence of an owner or tenant.

"Weatherization Services" or "Weatherization" means the services that reduce energy costs for low-income households by increasing the energy efficiency of the dwelling unit while also improving the health and safety of the household members.

A household is eligible for assistance under the program regardless of whether the household rents or owns its dwelling unit.

An agency may not provide weatherization assistance unless the owner of a dwelling unit first gives written permission.

If the dwelling unit to be weatherized is a rental unit, the agency shall establish procedures and obtain the department's approval thereof, to ensure that:

(A) The residence considered for weatherization is not currently for sale by the owner of the property or designated for acquisition, clearance or foreclosure under a federal, state or local program;

(B) The benefits of weatherization assistance accrue primarily to the low-income resident renting the unit;

(C) The rent of the unit will not be raised as a result of the weatherization assistance;

(D) No undue or excessive increase in the value of the unit will occur as a result of the weatherization assistance; and

(E) Weatherization assistance will not be provided for a unit for which the tenant pays the cost of energy as part of their rent, unless the landlord agrees to reduce rent to account for the reduction in fuel costs associated with the weatherization, long term rent affordability is assured or unless health or safety reasons justify weatherization.

ADOPTED RULE

Oregon

Registration – Fees – Park closure

Effective 12/21/2018, this rule adopts Or. Admin. R. 813-007-0020, -0025; -065-0110.

The rule amends Or. Admin. R. 813-007-0020 to remove the specific dollar amount associated with the registration fee for landlords of manufactured dwelling parks. The registration fee is outlined in Or. Admin. R. 813-007-0025

The rule amends Or. Admin. R. 813-007-0025 to update the manufactured dwelling park registration fee to match Or. Rev. Stat. § 90.732.

The amended rule provides:

The department will charge the manufactured dwelling park landlord a registration charge of $50 for each manufactured dwelling park with more than 20 spaces and $25 for each manufactured dwelling park with 20 or fewer spaces owned or managed by the manufactured dwelling park landlord.

Formerly, the fee was $25 for all parks.

Or. Admin. R. 813-065-0110 has been updated to reflect the change to Or. Rev. Stat. § 90.645(3). The Consumer Price Index (CPI) will be used to calculate the amount that a landlord is required to pay the tenant for each space for which a rental agreement is terminated in the event of a park closure.

DEFAULT SERVICING

CASE LAW

Bankruptcy – Cramdown

CASE NAME: *In re Lister*
DATE: *09/25/2018*
CITATION: *United States Bankruptcy Court, S.D. Ohio, Western Division. --- B.R. ---- 2018 WL 6273357*

Debtors owned their real property since 1996. The Property consisted of two adjacent parcels of real estate that were both pledged as collateral through a consensual mortgage for the debt owed to U.S. Bank Trust, NA. The mortgage in question was executed on May 16, 2005.

The Debtors owned and operated a home childcare on the premises for the past twenty-one years.

Since October 2014, the Debtors had received monthly rent for the rental of a separate structure that existed on the Property. The separate structure served as a residence for a third-party.

Creditor argued that the proposed cramdown of the Creditor's secured claim by Debtors in their chapter 13 plan was prohibited by the anti-modification provision of 11 U.S.C. § 1322(b)(2). The Debtors maintained that the anti-modification provision did not apply because Creditor's claim was secured by real property that was not solely the Debtors' principal residence.

The Court adopted the view that the anti-modification provision applies if the security interest in the real property includes the debtor's principal residence. The Court also adopted the view that the petition date was the appropriate date to determine the debtor's principal residence status.

Under the approach adopted by the Court, the fact that the Debtors operated a business from their home did not exclude Creditor's claim from the anti-modification provision of § 1322(b)(2) simply because the Property also served additional purposes. Similarly, the fact that the Debtors rented a separate structure on the Property to a third-party and received rental income, in and of itself, did not preclude application of the anti-modification provision to the Creditor's claim.

A third factor, however, went to whether Creditor's claim was secured by collateral in addition to the real property that was the Debtors' principal residence. The Debtors asserted that Creditor's claim was secured by a second parcel of land that was not the Debtors' residence.

The Court found that the tax records together with other evidence in the record were sufficient to establish that both parcels served as the Debtors' principal residence. The tax records, as well as the deed, reflected that the Debtors acquired both parcels in the same conveyance. The fact that all of the out-buildings were located on Parcel # 2, including the only garage on the Property, suggested that the two parcels were acquired to be used as one residential property.

The configuration of the two parcels likewise suggested that the two parcels were one integrated property. The Debtors' house appeared to be positioned right on the edge of both parcels such that the inability to use Parcel # 2 would impair the Debtors' use and enjoyment of their house on Parcel # 1. As such, the layout of the parcels suggested that Parcel # 2 served more as an "expanded backyard" than as a separate and distinct property.

The Court found that Creditor's claim was secured only by a security interest in real property that was the Debtors' principal residence and, as such, was protected by the anti-modification provision of § 1322(b)(2). Accordingly, Creditor's objection to the Debtors' proposed plan was sustained.

CASE LAW

Foreclosure – Lender contact

CASE NAME: *Schmidt v. Citibank, N.A.*
DATE: *11/07/2018*
CITATION: *Court of Appeal, Fourth District, Division 1, California. 28 Cal.App.5th 1109. 239 Cal.Rptr.3d 648. 18 Cal. Daily Op. Serv. 10, 752*

The Schmidts filed suit, alleging violations of the Homeowners' Bill of Rights (HBOR; Cal. Civ. Code, §§ 2923.55, 2923.6) and Bus. and Prof. Code § 17200, and seeking to prevent the completion of a trustee's sale of their residence.

The defendants moved for summary judgment and presented evidence of extensive and numerous telephone calls between the Schmidts and Select Portfolio Servicing, Inc., the loan servicer, during which the Schmidts' financial situation was discussed, as were possible options to avoid foreclosure. The trial court granted the defendants' motion for summary judgment.

The Schmidts appealed, contending that there remained factual issues in dispute as to whether the defendants complied with the requirements of former section 2923.55 prior to the recording of the notice of default in January 2015.

The Court noted that, during the relevant time period, former section 2923.55 required that, at least 30 days prior to recording a notice of default, a "mortgage servicer ... contact the borrower in person or by telephone in order to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure." It further provided: "During the initial contact, the mortgage servicer shall advise the borrower that he or she has the right to request a subsequent meeting and, if requested, the mortgage servicer shall schedule the meeting to occur within 14 days. The assessment of the borrower's financial situation and discussion of options may occur during the first contact, or at the subsequent meeting scheduled for that purpose. In either case, the borrower shall be provided the toll-free telephone number made available by the United States Department of Housing and Urban Development (HUD) to find a HUD-certified housing counseling agency. Any meeting may occur telephonically." (The Court also noted that the Legislature essentially re-enacted all but a small portion of section 2923.55 when it enacted many of the same provisions in section 2923.5, effective January 1, 2018.)

The Schmidts claimed that the "alleged contacts" between SPS and the Schmidts "do not constitute compliance with Civil Code section 2923.55 because they were initiated by Mr. Schmidt, not the lender or its agent." The Court, however, disagreed, finding that the language of the statute did not require that a lender initiate the contact; rather, the statute required only that the lender make contact in some manner and provide the borrower with an opportunity to discuss the borrower's financial situation and possible options for avoiding foreclosure.

Affirmed.

CASE LAW
Rescission – Statute of limitations

CASE NAME: *Hoang v. Bank of America, N.A.*
DATE: *12/06/2018*
CITATION: *United States Court of Appeals, Ninth Circuit. --- F.3d ----. 2018 WL 6367268*

On April 30, 2010, Hoang refinanced his home loan with Bank of America, N.A. and the Federal National Mortgage Association (collectively, the Bank). At the time of the refinancing, the Bank failed to give Hoang notice of the right to rescind the loan, thereby violating TILA's disclosure requirement. As a result, Hoang had three years from the loan's consummation date of April 30, 2010, to rescind the loan. On April 15, 2013 (within the three-year period), Hoang sent the Bank notice of intent to rescind the loan under TILA. The Bank took no action in response to receiving the notice.

In February 2017, the Bank declared Hoang in default and initiated non-judicial foreclosure proceedings. To stop the foreclosure, Hoang filed suit on May 9, 2017, requesting enforcement of the loan rescission under TILA, through declaratory and injunctive relief. In addition, Hoang requested monetary damages under the Washington Consumer Protection Act.

The district granted the Bank's motion to dismiss, because Hoang's claims were time barred. To find the claims time barred, the district court adopted the one-year statute of limitations applicable to TILA claims for monetary damages.

On appeal, the Court noted that *Jesinoski v. Countrywide Home Loans*, ––– U.S. ––––, 135 S.Ct. 790, 190 L.Ed.2d 650 (2015) eliminated the need for a borrower to bring suit within the three-year window to exercise TILA rescission. Although emphasizing that the borrower need only give the notice of rescission within the three years, the Supreme Court did not clarify when a suit to enforce the rescission must be brought after a lender's failure to act on that notice of rescission.

According to the Court, when there is no statute of limitations expressly applicable to a federal statute, the general rule is that a state limitations period for an analogous cause of action is borrowed and applied to the federal claim.

Under Washington's general contract law, the statute of limitations sets forth a six-year limitation period for an "action upon a contract in writing, or liability express or implied arising out of a written agreement." The loan agreement between Hoang and the Bank was a contract in writing. An action to rescind that loan (under TILA or otherwise) arises out of that written agreement. Because TILA rescissions necessarily require a contract to be rescinded, contract law provides the best analogy and the Court adopted the general contract law statute of limitations. The Court found that the district court's choice to apply the TILA one-year legal damages statute of limitations was based primarily on a misreading of Hoang's complaint as requesting TILA relief rather than relief under the WCPA. More importantly, TILA provides for both legal damages and equitable relief but only includes a statute of limitations for legal damages relief. The statute does not suggest that the statute of limitations for legal damages relief is also applicable to claims for equitable remedies.

Reversed and remanded.

CASE LAW

RESPA – Injury

CASE NAME: *Wirtz v. Specialized Loan Servicing, LLC*
DATE: *12/10/2018*
CITATION: *United States District Court, D. Minnesota. Slip Copy. 2018 WL 6492759*

In an order dated May 9, 2016, the Court determined that SLS violated RESPA by failing to adequately investigate and remedy an error in Wirtz's mortgage loan payment history. The Court also determined that SLS violated the Minnesota Mortgage Originator and Servicer Licensing Act (MOSLA) given its RESPA violation. With respect to damages, the Court held that Wirtz had incurred $80.00 in actual damages and $4,137.22 in statutory damages. SLS appealed.

The Eighth Circuit agreed with the Court that SLS had violated RESPA, but concluded that Wirtz had failed to establish actual damages caused by the RESPA violations. Because actual damages are required under RESPA before "additional" damages can be awarded, the Eighth Circuit also reversed the award of statutory damages.

As to the MOSLA claim, which was premised on the RESPA violation, the Eighth Circuit reversed and remanded for a determination as to whether MOSLA provides a cause of action when a loan servicer violates a federal law regulating mortgage loans, such as RESPA, but where there is no federal cause of action.

The Court found that MOSLA creates a private right of action for a borrower "injured by" a violation of its provisions, and concluded that Wirtz's lack of injury was fatal to his claim under MOSLA.

CASE LAW

TCPA – ATDS

CASE NAME: *Wilson v. Quest Diagnostics, Inc.*
DATE: *12/17/2018*
CITATION: *United States District Court, D. New Jersey. Slip Copy. 2018 WL 6600096*

Quest provides diagnostic testing services at laboratories nationwide. On June 20, 2018, Plaintiff answered an unsolicited call to her cell phone from Quest. The Quest representative told Plaintiff the purpose of the call was to "collect a debt owed by someone other than Plaintiff." Plaintiff never gave Quest permission to call her cell phone, never had any contact with Quest prior to receiving the call, and never provided Quest her phone number.

Upon answering the call, Plaintiff heard a momentary pause before a representative started speaking to her. The pause allegedly indicated that Quest used a predictive dialer, a device used to automatically dial telephone numbers.

Plaintiff asserted this conduct violated the TCPA's prohibition on placing non-emergency calls to her cell phone using an automatic telephone dialing system without having the prior express consent of the person called. As a result, Plaintiff filed a two-count class action complaint under the TCPA, seeking injunctive relief and statutory damages.

The Court found that a predictive dialer qualifies as an ATDS so long as it has the present capacity to dial numbers without human intervention. According to the Court, neither *ACA Int'l v. FCC*, 885 F.3d 687, 699 (D.C. Cir. 2018) nor *Dominguez v. Yahoo, Inc.*, 894 F.3d 116, 119 (3d Cir. 2018) invalidated the FCC's 2003 and 2008 Orders regarding the definition of an ATDS, only its 2015 Order.

The Court further found that Plaintiff sufficiently alleged that Quest contacted her cell phone using a predictive dialer—a device considered an ATDS under binding precedent. Dead air after answering the phone is indicative that the caller used a predictive dialer. Thus, it was plausible that Quest used a predictive dialer to call Plaintiff. And since a predictive dialer can qualify as an ATDS under the TCPA, Plaintiff adequately stated a claim for relief.

CASE LAW
TCPA – ATDS

CASE NAME: *Collins v. National Student Loan Program*
DATE: *12/20/2018*
CITATION: *United States District Court, D. New Jersey. Slip Copy. 2018 WL 6696168*

From January 7, 2015 through October 3, 2015, NSLP made 206 calls to Plaintiff's cell phone regarding his delinquent student loan payments. Plaintiff told Defendant's representatives, on at least one occasion, to cease any further calls to his cell phone. However, Defendant's representatives continued to call Plaintiff's cell phone until October 2015, when the loan defaulted and was transferred to the Department of Education for collection.

Defendant initiated these calls to Plaintiff's cell phone number using the LiveVox HCI system, purportedly designed to involve human intervention in calls directed to cell phone numbers. Cell phone numbers are electronically uploaded into the HCI system and presented to the "clicker agent," who must physically click a dialog box to launch the call. Although the HCI system selects which phone numbers are presented to the clicker agent, the software cannot dial the number unless the clicker agent manually clicks the button to initiate the call. If the call is answered, the clicker agent then transfers the call to a "closer agent" who speaks directly with the call recipient.

Defendant utilizes two LiveVox calling systems; one to reach cell phone numbers (HCI) and the other to reach landlines (called "Quick Connect"). Whereas the HCI software requires human intervention to initiate each call, the Quick Connect system uses some predictive capabilities to call landline numbers. It was undisputed that the calls to Defendant's cell phone were initiated using the HCI software. However, Plaintiff alleged that HCI and Quick Connect were simply different "modes" of operation for the same underlying LiveVox system. Thus, Plaintiff alleged that the existence of Defendant's other dialing system demonstrated that "Defendant's LiveVox system as a whole clearly has the present capacity without modification to place calls from a stored list without human intervention."

Plaintiff filed suit, alleging that Defendant violated the TCPA by using an ATDS to call Plaintiff without his prior express consent.

The Court found that, although LiveVox HCI's level of human intervention seemed minimal, every court to examine this issue has held that the clicker agent's role prevented the system from qualifying as an ATDS under the statute.

Further, Plaintiff could not rely on an argument that the system "had the latent or potential capacity to function as [an] autodialer." Instead, Plaintiff had to provide evidence that the system "had the present capacity to function as an autodialer." Plaintiff failed to cite any evidence that would lead a reasonable juror to conclude that LiveVox HCI had the "present capacity" to initiate autodialed calls to cell phone numbers without modifications to the system. Therefore, Plaintiff's TCPA claim failed as a matter of law.

CASE LAW
RESPA – Agency

CASE NAME:	*Christiana Trust v. Riddle*
DATE:	*12/21/2018*
CITATION:	*United States Court of Appeals, Fifth Circuit. --- F.3d ----. 2018 WL 6715882*

Mary Sue Riddle, who took out a home-equity loan from Bank of America, alleged that the bank was vicariously liable for the failure of the bank's loan servicer to comply with the RESPA. The district court dismissed Riddle's claims.

On appeal, the Court affirmed for two independent reasons. First, Riddle did not plead an agency relationship between Bank of America and the loan servicer, an essential element of a vicarious liability claim. Second, even if Bank of America had an agency relationship with the loan servicer, the bank could not be held vicariously liable, as a matter of law, for the servicer's alleged RESPA violations.

The Court noted that, by its plain terms, the regulation at issue here imposes duties only on servicers. 12 C.F.R. § 1024.41(c)(1) ("[A] servicer shall ..."). A loan servicer's obligation to follow this regulation derives from RESPA itself, which also confines this obligation to servicers alone. Specifically, the statute provides that "a servicer of a federally related mortgage shall not ... fail to comply with any other obligation found by the Bureau of Consumer Financial Protection, by regulation, to be appropriate to carry out the consumer protection purposes of this chapter." 12 U.S.C. § 2605(k)(1)(E).

CASE LAW
Debt collection – Liability

CASE NAME:	*Mills v. Galyn Manor Homeowner's Ass'n, Inc.*
DATE:	*12/21/2018*
CITATION:	*Court of Special Appeals of Maryland. --- A.3d ---- 2018 WL 6718601*

The Court found that, unlike the FDCPA which only imposes liability on "debt collector[s,]" the Maryland Consumer Protection Act -- with some statutory exemptions -- functions to hold any "person" liable, whether or not that person holds herself out as a professional debt collector.

According to the Court, a debt collector should not be able to hire an attorney to engage in illegal debt collection practices on its behalf as a means of avoiding liability under the FDCPA.

In this case, Galyn Manor qualified as a "person" subject to liability under the MCPA. Therefore, it would be improper for Galyn Manor to evade liability by hiring an attorney to commit violations on its behalf.

In short, Galyn Manor was not shielded from liability under the MCPA simply because the law firm it hired to collect the debt was exempt.

CASE LAW
Foreclosure – Statute of limitations

CASE NAME:	*Grant v. Citizens Bank, N.A.*
DATE:	*12/26/2018*
CITATION:	*District Court of Appeal of Florida, Fifth District. --- So.3d ----. 2018 WL 6816805*

In September 2005, Grant executed a note to SunTrust Mortgage, Inc., secured by a mortgage on real property. The note and mortgage were eventually transferred to Citizens Bank.

After Grant failed to make the payment due in December 2010, and all subsequent payments, Citizens Bank accelerated Grant's loan. Grant did not cure the default, and in November 2015, Citizens Bank filed a foreclosure complaint (its third foreclosure action against Grant on the same note and mortgage), alleging Grant defaulted on the note and mortgage by failing to pay the December 2010 payment and all subsequent payments. The complaint sought interest from November 1, 2010, together with principal, attorney's fees and other damages. Grant argued that the statute of limitations barred Citizens Bank from collecting any amounts due on the note and mortgage accruing more than five years prior to the filing of the complaint.

The trial court entered judgment in favor of Citizens Bank, and awarded interest back to May 2009, a date more than five years prior to the filing of the foreclosure action.

On appeal, the Court found that, when the right to accelerate the debt for non-payment is optional with the holder of the note, the statute of limitations does not run until the note is due unless the lender or holder accelerates and declares the full balance due earlier. Because the promissory note allowed the lender or holder to hold off or forbear accelerating the note upon the borrower's non-payment, such forbearance did "not constitute a waiver or defense against future collection of all sums due and owing under the note."

While Citizens Bank could have waited until the note's maturity date (i.e., fifteen years after the note was executed) to bring its action for nonpayment on the note and to foreclose the mortgage, it was not required to do so. Instead, Citizens Bank accelerated the debt, as it was permitted to do, and filed suit. Had it pleaded a default date of May 2009, more than six years from the first default date alleged (and proved) in the complaint, Citizens Bank would not have waived or forfeited its right to an award in the final judgment of all monies, including interest, owed for non-payments on the note based on the statute of limitations defense. Nevertheless, since Citizens Bank failed to plead for interest from May 2009, and it was not tried by consent, the trial court erred in awarding interest accruing prior to November 2010.

Also, because Citizens Bank did not present any evidence of attorney's fees at trial, the Court reversed the fee award without remand on that issue.

Accordingly, the Court affirmed the judgment except insofar as it awarded interest accruing prior to November 1, 2010. In doing so, the Court receded from its opinion in *Velden v. Nationstar Mortgage, LLC*, 234 So.3d 850 (Fla. 5th DCA 2018), which held that a lender could not recover damages for defaults that occurred more than five years prior to the filing date of the lawsuit. The Court also struck the award of attorney's fees.

LEGISLATION
California
Debt collection – Time-barred debt

2017 CA A 1526. Enacted 9/5/2018. Effective 1/1/2019.

This bill amends Cal. Civ. Code § 1788.14 to provide that no debt collector shall collect or attempt to collect a consumer debt by means of the following practices:

(d) Sending a written communication to a debtor in an attempt to collect a time-barred debt without providing the debtor with one of the following written notices:

(1) If the debt is not past the date for obsolescence set forth in Section 605(a) of the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681c), the following notice shall be included in the first written communication provided to the debtor after the debt has become time-barred:

"The law limits how long you can be sued on a debt. Because of the age of your debt, we will not sue you for it. If you do not pay the debt, [insert name of debt collector] (formerly, we) may [continue to] report it to the credit reporting agencies as unpaid for as long as the law permits this reporting."

(2) If the debt is past the date for obsolescence set forth in Section 605(a) of the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681c), the following notice shall be included in the first written communication provided to the debtor after the date for obsolescence:

"The law limits how long you can be sued on a debt. Because of the age of your debt, we will not sue you for it, and we will not report it to any credit reporting agency."

For purposes of this section, "first written communication" means the first communication sent to the debtor in writing or by facsimile, email, or other similar means.

Existing law prescribes periods for commencement of various actions. Among others, an action must be commenced within 4 years if the action is to recover (1) upon a book account whether consisting of one or more entries; (2) upon an account stated based upon an account in writing, but the acknowledgment of the account stated need not be in writing; or (3) a balance due upon a mutual, open and current account, the items of which are in writing. Existing law provides, however, that where an account stated is based upon an account of one item, the time shall begin to run from the date of the item, and where an account stated is based upon an account of more than one item, the time shall begin to run from the date of the last item.

The bill amends Cal. Civ. Proc. Code § 337 to specify that when the 4-year period in which an action must be commenced has run, no person may bring suit or initiate an arbitration or other legal proceeding to collect the debt. The bill provides that the period may be extended only pursuant to Section 360.

PRESS RELEASE
Massachusetts
Attorney General – Servicing

Issued 12/20/2018.

The Massachusetts Attorney General's Office announced that, in an assurance of discontinuance, filed in Suffolk Superior Court, New Penn Financial, LLC d/b/a Shellpoint Mortgage Servicing (Shellpoint) will provide millions in relief to borrowers in the form of reductions on the principal balances of their loans and waive shortfalls when borrowers sell their homes for less than what they owe. Shellpoint will also change their practices to better assist struggling homeowners going forward.

The investigation revealed that Shellpoint failed to ensure a single point of contact for borrowers; that it mishandled calls from borrowers with limited English language capacity; that it created unnecessary difficulties for homeowners after a divorce or the death of a co-borrower; and that it mishandled mortgage loans transferred from other servicing companies. The AG's Office also found that Shellpoint did not provide a timely and efficient loan modification review for eligible borrowers. Shellpoint agreed to make major business practice changes to address these deficiencies and was responsive to the AG's Office during the course of the investigation.

ADOPTED RULE
Nevada
Bad debts – Sales tax

Effective 12/19/2018, this rule adopts Nev. Admin. Code §§ 372.2 - .7 relating to sales tax. The rule provides that a retailer is only authorized to make a claim for a sales tax deduction for a bad debt within 12 months after the last day of the month in which the retailer: (1) writes off the debt in the retailer's business records.

The rule requires a retailer who claims a deduction from his or her taxable sales for a bad debt to keep a record of certain information regarding the debt and the sale giving rise to the debt and to make such records available to the Department of Taxation upon request.

The rule provides that the value of property sold that has been repossessed by the retailer is the actual cash value of the property and establishes the method for determining the actual cash value of property.

LEGISLATION
New York
Debt collection – Family members

2017 NY S 3491. Enacted 12/28/2018. Effective 3/28/2019.

This bill adds N.Y. Gen. Bus. Law § 601-a to provide that no principal creditors and/or debt collection agencies shall make any representation that a person is required to pay the debt of a family member in a way that contravenes with the Fair Debt Collection Practices Act (15 USC Section 1692 et seq.). In addition, the principal creditors and/or debt collection agencies shall not make any misrepresentation about the family member's obligation to pay such debts.

The bill also adds new subsection (4) to N.Y. Gen. Bus. Law § 600 to provide that "debt collection agency" shall mean a person, firm or corporation engaged in business, the principal purpose of which is to regularly collect or attempt to collect debts: (a) owed or due or asserted to be owed or due to another; or (b) obtained by, or assigned to, such person, firm or corporation, that are in default when obtained or acquired by such person, firm or corporation.

LEGISLATION
New York
Repossession – Notice

2017 NY S 5369. Enacted 12/28/2018. Effective 1/27/2019.

This bill amends N.Y. Veh. & Traf. Law § 425 to provide that, within twenty-four hours of the tenth day after repossession or retaking, a repossessor must personally deliver or mail to the nearest motor vehicle office of the state or county acting as an agent of the commissioner a "Notice of Repossession of MV or Motorcycle" (Form MV-327) identifying the home. The representative must also, within 24 hours, give notice to the owner of the home at his/her last known address, either personally or by registered or certified mail, or by first class mail, with a certificate of mailing properly endorsed by the postal service to be obtained.

LEGISLATION
Ohio
Personal lines insurance – Dwelling

2017 OH S 273. Enacted 12/19/2018. Effective the 91st day after filing with Secretary of State.

This bill adds Ohio Rev. Code § 3937.47 to provide:

(A) As used in this section, "personal lines insurance" means any policy of insurance issued to a natural person for personal or family protection, including basic property, dwelling fire, homeowner's, tenant's, inland marine, personal liability, and personal umbrella liability coverage.

(B) When the reason for cancellation of a personal lines insurance policy is nonpayment of premium, the effective date of cancellation shall be not less than ten days from the date the notice was mailed.

(C) An insurer may include a notice of cancellation of a personal lines insurance policy for nonpayment of premium with a billing statement. Subject to division (B) of this section, such a cancellation is effective on or after the due date of the bill.

PRESS RELEASE
FCC
Reassigned telephone number database

Issued 12/12/2018.

FCC Establishes Reassigned Phone Numbers Database To Help Reduce Unwanted Calls To Consumers.

The new rules establish a single, comprehensive database with information provided by phone companies that callers will be able to use to avoid calling reassigned numbers. Callers using the database will be able to find out if telephone numbers assigned to consumers who want their calls have been disconnected and made eligible for reassignment. Any such numbers can then be purged from their call lists, thereby decreasing the number of unwanted calls to consumers. To further encourage callers to use the database, the Commission is providing callers a safe harbor from liability for any calls to reassigned numbers caused by database error.

INSTALLATION

ADOPTED RULE

Washington

Fees

This rule amends Wash. Admin. Code Chapter 296-150i, Manufactured Home Installer Training and Certification Program, by amending Wash. Admin. Code § 296-150I-3000, Penalties, fees, and refunds, to increase fees payable to the department in advance.

The rule also amends Wash. Admin. Code Chapter 296-150m, Manufactured Homes, by amending Wash. Admin. Code § 296-150M-3000 Manufactured/mobile home fees, to increase fees, including: Design Plan Fees; Department Inspection Fees; Insignia Fees; Department Audit Fees; and Other Fees, including: Field Technical Service; Publication Printing And Distribution Of Laws and Regulations; Variance Inspection Fee; Homeowner Requested Inspection; Decertification Of A Mobile/Manufactured Home; Demolition Of A Mobile/Manufactured Home; Energy Conservation Permit.

In addition, the rule amends Wash. Admin. Code Chapter 296-150p, Recreational Park Trailers, by amending Wash. Admin. Code § 296-150P-3000, Recreational park trailer fees, to increase the fees.

LENDING

CASE LAW

Escrow – Interest - Preemption

CASE NAME: *McShannock v. JP Morgan Chase Bank N.A.*
DATE: *12/07/2018*
CITATION: *United States District Court, N.D. California. Slip Copy. 2018 WL 6439128*

Plaintiffs asserted that Chase's failure to pay escrow interest on their mortgage accounts violated Cal. Civ. Code § 2954.8 and 15 U.S.C. § 1639d(g).

Chase moved to dismiss on two bases: first, that Plaintiffs failed to comply with the provisions in their mortgage contracts requiring notice and an opportunity to cure alleged misconduct before bringing a judicial action; and second, that state law claims are preempted by the Home Owners' Loan Act. In the alternative, Chase sought a stay the pending the resolution of *Lusnak v. Bank of America, N.A.*

The Court first found that the Deeds of Trust provided, "Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds [in the escrow account], Lender shall not be required to pay Borrower any interest or earnings on the funds." The "Applicable Law" here was § 2954.8, which requires lenders to pay two percent interest on escrow funds. The Deeds of Trust, by incorporating § 2954.8, arguably required Chase to pay escrow interest to Plaintiffs. Thus, there was an argument that Chase's alleged non-payment of escrow interest was not "pursuant to" the Deeds of Trust, and Plaintiffs were therefore not required to give notice before bringing this suit. Further, the Plaintiffs' claim had an independent basis in statute, not the contract. And, any ambiguity regarding the scope of the notice and cure provision, must be construed against Chase, the drafter of the contract.

Accordingly, Plaintiffs' failure to comply with the notice and cure provisions did not foreclose their claims.

The Court found that, under the Ninth Circuit's *Lusnak* ruling, Plaintiffs could not rely on 15 U.S.C. § 1639d(g), because their mortgages all predated the enactment of § 1639d(g).

But the Ninth Circuit has also ruled that national banks are "required to follow" § 2954.8(a) because the National Banking Act does not preempt state escrow interest laws.

Chase, however, contended that § 2954.8(a) was preempted by HOLA because the loan was originated by WaMu, a federal savings bank governed by HOLA, not the NBA.

The Court concluded that HOLA preemption applies only to conduct occurring before the loan changed hands from the federal savings association or bank to the entity not governed by HOLA.

Generally, HOLA is strictly limited to federal savings institutions and is not intended to affect the operations of national banks, and OTS only regulates federal savings associations.

Second, finding preemption here would run afoul of one of the original purposes of HOLA enactment: consumer protection.

The Court found nothing in the record suggesting that requiring national banks to comply with state laws such as the escrow interest law here would threaten the stability of the secondary mortgage loan market for federal savings associations. Accordingly, HOLA does not preempt § 2954.8(a) with respect to Plaintiffs' loans.

The motion to dismiss was denied. Since the Supreme Court denied the petition for writ of certiorari in *Lusnak*, the motion to stay was denied as moot.

ADOPTED RULE
Iowa
Manufactured housing loans

Effective 1/9/2019, this rule adopts Iowa Admin. Code r. 265-45.1 thru .8 to allow the Iowa Finance Authority to allocate funds to financial institutions or lenders to finance the purchase by individuals of manufactured homes that are in compliance with all laws, rules, and standards that are applicable to manufactured homes. The fund is designed exclusively for manufactured homes sited on leased land located in the state of Iowa.

The rule provides that linked deposits shall be made pursuant to a lender participation agreement to be created by the authority. If the mortgage loan is to be made by a financial institution, the lender participation agreement shall be between the authority and the financial institution. If the mortgage loan is to be made by a lender, the lender participation agreement shall be between the authority, the lender, and a financial institution.

To be eligible for a linked deposit under the program, a mortgage loan shall meet all of the following requirements:

a. The mortgage loan must be for the purchase of a manufactured home as the borrower's primary residence; refinancing is not eligible for the program;

b. The manufactured home must be sited on leased land located in the state of Iowa;

c. The term of the mortgage loan shall not exceed 30 years;

d. The mortgage loan shall be fully amortized;

e. The terms of the mortgage loan shall contain no prepayment penalties;

f. The interest rate payable on the mortgage loan shall not exceed 9 percent APR;

g. Fees charged by the financial institution or lender to cover its costs of originating the mortgage loan (closing fees, origination fees, etc.) shall, in the aggregate, not exceed 1 percent of the principal mortgage loan amount;

h. Closing agent/settlement fees paid to third-party closers, if any, shall not exceed $500;

i. Customary and reasonable closing costs shall be allowed; and

j. The financial institution or lender shall comply with all applicable fair lending laws and regulations.

LEGISLATION
New York
Plain language contracts

2017 NY S 7074. Enacted 12/28/2018. Effective 6/26/2019.

This bill amends N.Y. Gen. Oblig. Law § 5-702 to increase the monetary exclusion on the requirement of plain language in consumer contracts from amounts in excess of fifty thousand dollars to amounts in excess of one hundred thousand dollars.

NOTICE
Texas
Mortgage Credit Certificate Program

Filed 12/10/2018.

The Texas Department of Housing and Community Affairs (the Department) intends to implement a Mortgage Credit Certificate Program (the Program) to assist eligible very low, low, and moderate income first-time homebuyers with the purchase of a residence located within the State of Texas.

Under the Program, a first-time homebuyer who satisfies the eligibility requirements described herein may receive a income tax credit in an amount equal to the product of the certificate credit rate established under the Program and the interest paid or accrued by the homeowner during the taxable year on the remaining principal of the certified indebtedness amount incurred by the homeowner to acquire the principal residence of the homeowner; provided that such credit allowed in any taxable year does not exceed $2,000. In order to qualify to receive a mortgage credit certificate, the homebuyer must qualify for a conventional, FHA, VA, USDA or other home mortgage loan from a lending institution and must meet the other requirements of the Program.

The Department intends to maintain a list of single family mortgage lenders that will participate in the Program by making loans to qualified holders of these mortgage credit certificates. Any lender interested in appearing on this list or in obtaining additional information regarding the Program should contact Sue Nance at the Texas Department of Housing and Community Affairs, 221 East 11th Street, Austin, Texas 78701-2410; (512) 475-3356. The Department may schedule a meeting with lenders to discuss in greater detail the requirements of the Program.

LEGISLATION
United States
Flood insurance

2017 US S 3628. Enacted 12/21/2018. Effective 12/7/2018.

This bill extends the provisions of the National Flood Insurance Program in 42 U.S.C. 4026 to 5/31/2019.

PRESS RELEASE
CFPB
Refinancing - Veterans

Released 12/6/2018.

The Bureau of Consumer Financial Protection (Bureau) filed a complaint in federal court in the District of Nevada alleging a claim of deception against Village Capital & Investment LLC, a non-bank mortgage company headquartered in Henderson, Nev. The Bureau and Village Capital also filed a proposed stipulated final judgment and order to resolve the claim. Documents were filed on Tuesday, Dec. 4.

As described in the complaint and proposed order, the Bureau alleged that Village Capital violated the Consumer Financial Protection Act of 2010 by misleading veterans regarding its Interest Rate Reduction Refinancing Loans—loans that allow veterans to refinance their mortgages at lower interest rates with a loan guaranteed by the Department of Veterans Affairs. Specifically, the Bureau alleged that Village Capital misled veterans by overstating the benefits of refinancing.

If entered by the court, the proposed order would require Village Capital to pay $268,869 in redress to consumers and a civil penalty of $260,000. The order would also prohibit Village Capital from misrepresenting the terms or benefits of mortgage refinancing.

OFFICIAL INTERPRETATION
CFPB
TILA Adjustment

🙂

Issued 12/20/2018.

TILA Adjustment to Asset-Size Exemption Threshold.

The Bureau of Consumer Financial Protection (Bureau) is amending the official commentary that interprets the requirements of the Bureau's Regulation Z (Truth in Lending) to reflect a change in the asset-size threshold for certain creditors to qualify for an exemption to the requirement to establish an escrow account for a higher-priced mortgage loan based on the annual percentage change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). Based on the 2.6 percent increase in the average of the CPI-W for the 12-month period ending in November 2018, the exemption threshold is adjusted to increase to $2.167 billion from $2.112 billion. Therefore, creditors with assets of less than $2.167 billion (including assets of certain affiliates) as of December 31, 2018, are exempt, if other requirements of Regulation Z also are met, from establishing escrow accounts for higher priced mortgage loans in 2019.

FINAL RULE
HUD
Home Warranties

😐

83 Fed. Reg. 64269 (12/14/2018). Effective 3/14/2019.

24 CFR Parts 200, 203.

This final rule streamlines the home warranty requirements for FHA single-family mortgage insurance by removing the regulations that require borrowers to purchase 10-year protection plans in order to qualify for certain mortgages on newly constructed single-family homes. This action conforms with the changes made by the Housing and Economic Recovery Act of 2008 (HERA). HUD, however, is retaining the requirement that the Warranty of Completion of Construction (form HUD-92544) be executed by the builder and the buyer of a new construction home, as a condition for FHA mortgage insurance. This final rule follows publication of a February 6, 2013, proposed rule, and takes into consideration the public comments received on the proposed rule.

BULLETIN
FHA
Mortgage limits

😐

Issued 12/14/2018.

2019 Nationwide Forward Mortgage Limits.

The FHA national low-cost area mortgage limits, which are set at 65 percent of the national conforming limit of

$484,350 for a one-unit property, are, by property unit number, as follows:

- One-unit: $314,827
- Two-unit: $403,125
- Three-unit: $487,250
- Four-unit: $605,525

The FHA national high-cost area mortgage limits, which are set at 150 percent of the national conforming limit of $484,350 for a one-unit property, are, by property unit number, as follows:

- One-unit: $726,525
- Two-unit: $930,300
- Three-unit: $1,124,475
- Four-unit: $1,397,400.

LICENSING

LEGISLATION
Illinois
Residential mortgages

😐

2017 IL H 5542. Enacted 12/19/2018. Effective immediately.

This bill amends 205 Ill. Comp. Stat. 635/2-4, formerly, Averments of Licensee, which provided that each application for license shall be accompanied by specified averments.

As amended, this section is now Prohibited acts and practices for licensees, and specifies violations of the Residential Mortgage License Act.

The bill amends 205 Ill. Comp. Stat. 635/4-8.3 to provide that a licensee filing a Mortgage Call Report is not required to file an annual report.

The bill amends 205 Ill. Comp. Stat. 635/5-9, Notice of change in loan terms, to provide that the requirements of this Section do not apply to a licensee providing a notice of change in loan terms pursuant to the federal Consumer Financial Protection Bureau's Know Before You Owe mortgage disclosure procedure pursuant to the federal Truth in Lending Act and amendments promulgated under 12 CFR 1026 and the federal Real Estate Settlement Procedures Act and amendments promulgated under 12 CFR 1024.

LEGISLATION
Ohio
Mortgage servicing

😐

2017 OH H 489. Enacted 12/19/2018. Effective the 91st day after filing with Secretary of State.

This bill amends Ohio Rev. Code § 1322.01, under the Residential Mortgage Lending Act, to provide that "Buyer" includes an individual whose mortgage loan is serviced by a mortgage servicer.

The bill provides that "Mortgage servicer" means an entity that, for itself or on behalf of the holder of a mortgage loan, holds the servicing rights, records mortgage payments on its books, or performs other functions to carry out the mortgage holder's obligations or rights under the mortgage agreement including, when applicable, the receipt of funds from the mortgagor to be held in escrow for payment of real estate taxes and insurance premiums and the distribution of such funds to the taxing authority and insurance company.

The bill amends Ohio Rev. Code § 1322.07 to require registration of a mortgage servicer.

The bill amends Ohio Rev. Code § 1322.12 to provide that each registrant or entity holding a valid letter of exemption under division (B) (1) of section 1322.05 of the Revised Code shall designate an employee or owner of that registrant's business as the operations manager.

The bill adds Ohio Rev. Code § 1349.72, under the Consumer Protection Chapter, to provide:

(A) Before a person collecting a debt secured by residential real property collects or attempts to collect any part of the debt, the person shall first send a written notice to the residential address of the debtor, if both of the following apply:

(1) The debt is a second mortgage or junior lien on the debtor's residential real property.

(2) The debt is in default.

Upon written request of the debtor, the owner of the debt shall provide a copy of the note and the loan history to the debtor.

ADOPTED RULE
South Dakota
Contractors - Fees

Effective 1/9/2019, this rule amends S.D. Admin. R. 20:53:07:03 and 20:53:07:09.

The rule amends S.D. Admin. R. 20:53:07:03, License and examination fees, to increase the license fees for manufactured and mobile home contractor initial license and renewal from $140 to $160, and for manufactured and mobile home installer initial license and renewal from $55 to $65.

The rule amends S.D. Admin. R. 20:53:07:09, Restricted license and examination fees, to increase the restricted license fees for a restricted manufactured mobile home contractor initial license and renewal from $90 to $110 and for a restricted manufactured and mobile home installer initial license and renewal from $45 to $55.

REGULATION

BULLETIN
New York
Department of Financial Services

New York Governor Andrew Cuomo will nominate Linda Lacewell, his chief of staff, Superintendent of the state Department of Financial Services (DFS).

Lacewell is a former federal prosecutor and the state's first chief risk officer.

Lacewell will replace Maria Vullo, who will step down on Feb. 1.

BULLETIN
CFPB
Director confirmed

On December 6, 2018, the U.S. Senate, by a 50-49 vote, confirmed Kathy Kraninger as the Director of the Bureau of Consumer Financial Protection, succeeding Interim Director Mick Mulvaney. Kraninger has announced that she will not be implementing Mulvaney's plan to change the bureau's acronym from the CFPB to the BCFP.

SALES

ADOPTED RULE
Florida
Out of state sales - Form

Effective 1/8/2019, this rule amends Fla. Admin. Code Ann. r. 12A-1.007, Aircraft, Boats, Mobile Homes, and Motor Vehicles, to correct the title provided for Form DR-123.

The form was the Affidavit for Partial Exemption of Motor Vehicle Sold for Licensing Outside Florida.

It is now the Affidavit for Partial Exemption of Motor Vehicle Sold to a Resident of Another State.

ADOPTED RULE

Nevada

Tire surcharge – "Vehicle" definition

Effective 12/19/2018, this rule amends Nev. Admin. Code § 444A.035, regarding a tire surcharge of $1 per tire, to provide that "vehicle" does not include mobile homes as defined in NRS 489.120.

TITLING AND PERFECTION

CASE LAW

Certificate of title - Filing

CASE NAME: *Westenhoefer v. Vanderbilt Mortg. & Fin., Inc. (In re Howard)*
DATE: *12/14/2018*
CITATION: *United States Bankruptcy Court for the Eastern District of Kentucky, London Division. LEXIS 3967*

The Chapter 7 Trustee filed an adversary proceeding seeking a judgment avoiding the lien of Vanderbilt Mortgage and Finance, Inc. on the Debtor's manufactured home. The Trustee maintained that Vanderbilt did not properly perfect its security interest under Kentucky law.

On May 26, 2017, the Debtor obtained financing from Vanderbilt to purchase a manufactured home that he would place on land in Clinton County, Kentucky. The Debtor granted a lien to Vanderbilt to secure repayment of the debt. On May 26, the Debtor was a resident of Wayne County, Kentucky. He did not move to Clinton County until sometime after July 7, 2017.

The manufactured home was certificated property under Kentucky law. Kentucky has an established statutory scheme for perfection of a security interest in certificated property. The secured creditor submits information regarding the security interest to the county clerk where the debtor resides. Ky. Rev. Stat. § 186A.190. The county clerk then submits the data to the state for notation in the Automated Vehicle Information System and on the certificate of title. Once the lien is recognized on the certificate of title, the lien is perfected.

Vanderbilt filed a title lien statement in Wayne County, Kentucky, on June 21, 2017, and the lien was noted on the certificate of title for the manufactured home.

The Court found that, therefore, Vanderbilt had a perfected security interest in the manufactured home. The Court rejected the Trustee's argument that Vanderbilt should have filed the lien in Clinton County, the intended residence of the Debtor. The Trustee claimed that "the dispositive issue in this case is whether the debtor's 'residence' is where the debtor lives when the home is purchased or if the debtor's 'residence' is where he lives when the home is delivered."

The Trustee's motion for summary judgment denied.

ADOPTED TEMPORARY RULE

Oregon

Park trailers

Effective 11/28/2018. Expires 5/26/2019.

This rule adopts Or. Admin. R. 918-525-0005 to provide a path for the Oregon Department of Transportation to issue titles to recreational park trailers.

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

ABOUT THE EDITORS

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

Find out more about Marc here: https://www.mcglinchey.com/Marc-J-Lifset

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

Find out more about Jeff here: https://www.mcglinchey.com/Jeffrey-Barringer

PETER COCKRELL is an Associate in the firm's consumer financial services practice, where he advises financial institutions and service providers on financial services regulatory and compliance matters at both the federal and state levels. Peter focuses his practice advising mortgage lenders and servicers, sales finance companies, depository institutions, and other financial service providers on consumer finance regulatory matters. Peter also assists clients on compliance with state consumer finance laws, helping them to develop and maintain multistate credit programs. He has also assisted clients responding to regulatory inquiries and examinations. As a member of the firm's Cybersecurity and Data Privacy group, Peter advises clients on compliance with both federal and state cybersecurity and data privacy laws.

Find out more about Peter here: https://www.mcglinchey.com/Peter-L-Cockrell

---

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

Any opinions, beliefs and/or viewpoints expressed within this newsletter are solely those of the original authors and do not necessarily reflect the opinions, beliefs and/or viewpoints of the Manufactured Housing Institute or reflect official policies and/or positions of MHI. MHI is not a law firm and does not practice law in any jurisdiction.

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