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 January 2019 Manufactured Housing Law Update.

Items of interest this month include the New York Department of Financial Services' fine of a servicer for failure to meet its obligations under New York's Vacant and Abandoned Property Law, as well as the North Carolina Commissioner of Banks communicating a change in policy regarding the licensing requirements imposed on the holders of servicing rights by updating an FAQ.

Other items of interest include New York adding gender identity or expression as an additional prohibited bases of discrimination under its civil rights law and Kentucky's revisions to its regulations for retailers and installers.

Those interested in leases with option to purchase should review the puppy lease case.

Enjoy the Update!

IN THIS ISSUE

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COMMUNITIES

LEGISLATION
Delaware
Federal workers - Shutdown

2019 DE H 2. Enacted 1/23/2019. Effective immediately.

This bill enacts Del. Code Ann. tit. 6, §§ 2501E et seq., the "Delaware Federal Employees Civil Relief Act."

The bill includes:

A Federal worker who is furloughed or required to work without pay during a shutdown may apply to a court for a temporary stay, postponement, or suspension regarding any payment of rent, mortgage, tax, fine, penalty, insurance premium, judgment, or other civil obligation or liability that the Federal worker owes or would owe during the duration of the shutdown;

During a covered period, a landlord may only evict a Federal worker for nonpayment from premises that are occupied or intended to be occupied primarily as a residence with an order of a court;

A court may stay eviction proceedings against a Federal worker for a period of 30 days if the court finds that the ability of the Federal worker to comply with the lease obligations has been materially affected by the shutdown. The court may extend the stay if, in the opinion of the court, justice and equity require;

An obligation or liability bearing interest at a rate in excess of 6 percent per year that is incurred by a Federal worker, or the Federal worker and the Federal worker's spouse jointly, before the shutdown shall not bear interest at a rate in excess of 6 percent;

The amount of any periodic payment due from a Federal worker under the terms of the instrument that created an obligation or liability covered by this section shall be reduced by the amount of the interest forgiven under §2509E(a)(2) that is allocable to the period for which such payment is made;

A court may grant a creditor relief from the limitations of this section if, in the opinion of the court, the ability of the Federal worker to pay interest upon the obligation or liability at a rate in excess of 6 percent per year is not materially affected by reason of the shutdown.

ADOPTED RULE
Kentucky
Form of notice

Effective 1/4/2019, this rule amends 815 Ky. Admin. Regs. 25:040.

The rule provides that each manufactured home and mobile home community permitted pursuant to KRS 219.310 to 219.410 and each county clerk's office shall post Form HBC MH-15 (adding the specific form).

The amended rule adds that if a current notice or the Form HBC MH-15 becomes damaged or unreadable, the notice or Form HBC MH-15 shall be removed and a newly printed Form HBC MH-15 shall be posted in its place.

ADOPTED RULE
Kentucky
Definitions

Effective 1/4/2019, this rule adopts 815 Ky. Admin. Regs. 25:001 to provide definitions that were deleted from other amended regulations.

ADOPTED RULE
Maine
Low-income rental housing

Effective 2/3/2019, this rule adopts 99-346-34 Me. Code R.

Under Maine law, an owner of a Low-income Rental Housing Project may not take an action that would cause rental assistance or affordability restrictions in connection with the project to terminate without first giving a 90 day Notice to the Tenants, MaineHousing, and any municipal housing authority for the municipality in which the property is located. MaineHousing has a right of first refusal to purchase the project at its Current Appraised Value. The owner and any purchaser of the Low-income Rental Housing Project must ensure that the current Tenants are allowed to either remain in their units at the same rent for 6 months following the loss of rental assistance or affordability restrictions, or receive relocation assistance.

This rule does the following: (1) outlines the requirements for the Notices to the Tenants and to MaineHousing, (2) sets forth a process for determining the Current Appraised Value of the Low-income Rental Housing Project, and (3) establishes the terms of relocation assistance that must be provided if the owner opts to provide relocation assistance rather than allow Tenants to stay in their units at the same rent for 6 months following the loss of rental assistance or affordability restrictions.

ADOPTED RULE

New Hampshire

Water conservation system

Effective 12/22/2018, this rule amends N.H. Code Admin. R. Ann. Env-Wq 1905.03, Water Conservation Plans, to add:

(d) An affected water user without an approved water conservation plan under Env-Wq 2101 shall:

(2) Submit a proposed water conservation plan that demonstrates compliance with Env-Wq 2101.05 through Env-Wq 2101.22 as applicable, specifically:

b. The water conservation plan for a small community water system active prior to May 15, 2005 or for a landlord-owned conservation system in which the landlord supplies water only to tenants and includes water service in a rental fee shall demonstrate the Env-2101.15 through Env-Wq 2101.17 (Water Meters for Specified Systems, Minimization of Water Loss and Water Waste for Specified Systems, Educational Outreach Program for Specified Systems), except that any deadlines specified therein shall not apply.

LEGISLATION

New Jersey

Swimming pools - Lifeguards

2018 NJ A 4191. Enacted 1/31/2019. Effective immediately.

This bill amends N.J. Stat. Ann. § 26:4A-5 to provide that no specially exempt facility (which includes mobile home parks) shall be deemed ineligible for an exemption from mandatory compliance with the first aid personnel and lifeguard requirements of N.J.A.C. 8:26-5 et seq. solely on the basis that the facility has a functional diving board, water slide, or similar recreational appurtenance.

The bill additionally provides that seasonal swimming pools are required to be inspected by the health authority prior to opening, and year-round swimming pools are subject to inspection twice per year.

The bill provides that lifeguards who are on duty at a swimming pool are not to have duties or perform any activities that would distract them or intrude upon their attention from proper observation of persons in the swimming pool area or that prevent immediate assistance to persons in distress in the water. However, nothing in the restriction is to be construed to prevent any lifeguard from performing minor administrative tasks, such as checking pool passes, or from performing any routine testing required by the DOH by regulation.

The bill provides that seasonal and year-round swimming pools in existence on January 1, 2018 are not required to take any steps to comply with any new requirements

concerning swimming pool circulation systems established by the DOH by regulation on or after January 1, 2018 until such time as alterations are made to any part of that swimming pool's circulation system.

LEGISLATION
New York
Discrimination

2019 NY S 1047. Enacted 1/25/2019. Effective 2/24/2019.

This bill prohibits discrimination based on gender identity or expression.

Among other things, it amends N.Y. Exec. Law § 296-a to add that it shall be an unlawful discriminatory practice for any creditor or any officer, agent or employee thereof, in the case of applications for credit with respect to the purchase, acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation, land or commercial space to discriminate against any such applicant because of the gender identity or expression, of such applicant or of the prospective occupants or tenants of such housing accommodation, land or commercial space, in the granting, withholding, extending or renewing, or in the fixing of the rates, terms or conditions of, any such credit.

It shall be an unlawful discriminatory practice for any creditor or any officer, agent or employee thereof:

To discriminate in the granting, withholding, extending or renewing, or in the fixing of the rates, terms or conditions of, any form of credit, on the basis of gender identity or expression;

To use any form of application for credit or use or make any record or inquiry which expresses, directly or indirectly, any limitation, specification, or discrimination as to gender identity or expression;

To refuse to consider sources of an applicant's income or to subject an applicant's income to discounting, in whole or in part, because of an applicant's gender identity or expression.

ADOPTED RULE
Rhode Island
Fair Housing

Effective 1/8/2019, this rule amends 515-10 R.I. Code R § 00-3 regarding Fair Housing.

Unless specifically provided otherwise, the rule lays out the procedures to apply to all charges filed under the Fair Housing Practices Act.

Each respondent may file an answer to the charge not later than ten (10) days after receipt. General denials are not accepted.

If a respondent is claiming an exemption from the provisions of the Fair Housing Practices Act prohibiting discrimination on the basis of familial status by proving that the housing accommodation is intended for and solely occupied by persons sixty-two (62) years of age or older or the housing accommodation is intended and operated for occupancy by at least one (1) person fifty-five (55) years of age or older per unit, the housing provider must be able to produce, in response to a charge filed under the Fair Housing Practices Act, verification of compliance with state law. To prove compliance, a facility shall develop procedures for routinely determining whether the occupant of each unit is age compliant.

The rule adds:

Other Accommodations. An owner may not refuse to make reasonable accommodations to rules, policies, practices or services, when those accommodations may be necessary to afford an occupant or prospective occupant with a disability equal opportunity to use and enjoy a dwelling and its facilities. This includes, but is not limited to, making reasonable accommodations to pet policies.

1. There must be an identifiable relationship, or nexus, between the requested accommodation and the person's disability.

2. Housing providers are entitled to verify the existence of the disability, and the need for the accommodation—if either is not readily apparent.

3. Housing providers are not required to provide any reasonable accommodation that would pose a direct threat to the health or safety of others.

4. A housing provider is not required to make an accommodation for an assistance animal if the presence of such animal would:

a. result in substantial physical damage to the property of others unless the threat can be eliminated or significantly reduced by a reasonable accommodation;

b. pose an undue financial and administrative burden; or,

c. fundamentally alter the nature of the housing provider's operations.

5. Not all animals necessary as a reasonable accommodation need to have specialized training.

LEGISLATION
Virginia
Rental agreements

2018 VA H 2054. Enacted 2/13/2019. Effective 7/1/2019.

This bill amends Va. Code Ann. § 55-248.7, under the Residential Landlord and Tenant Act, to provide that the landlord shall offer the tenant a written rental agreement containing the terms governing the rental of the dwelling unit and setting forth the terms and conditions of the landlord tenant relationship. Such written rental agreement shall be effective upon the date signed by the parties.

If a landlord does not offer a written rental agreement, the tenancy shall exist by operation of law, consisting of the following terms and conditions:

1. The provision of this chapter shall be applicable to the dwelling unit that is being rented;

2. The duration of the rental agreement shall be for 12 months and shall not be subject to automatic renewal, except in the event of a month-to-month lease as otherwise provided for under subsection C of Section 55-248.37;

3. Rent shall be paid in 12 equal periodic installments in an amount agreed upon by the landlord and the tenant and if no amount is agreed upon, the installments shall be at fair market rent;

4. Rent payments shall be due on the first day of each month during the tenancy and shall be considered late if not paid by the fifth of the month;

5. If the rent is paid by the tenant after the fifth day of any given month, the landlord shall be entitled to charge a late charge as provided in this chapter;

6. The landlord may collect a security deposit not to exceed an amount equal to two months of rent; and

7. The parties may enter into a written rental agreement at any time during the 12-month tenancy created by this subsection.

LEGISLATION
Virginia
Tax credits

2018 VA H 1681. Enacted 2/15/2019. Effective 7/1/2019.

The bill amends Va. Code Ann. § 58.1-439.12:04, Tax credit for participating landlords, to add the Virginia Beach-Norfolk-Newport News Metropolitan Statistical Area to the definition of "Eligible housing area."

LEGISLATION

Virginia

Unlawful detainer – Tenant payment

2018 VA H 1898. Enacted 2/15/2019. Effective 7/1/2019.

This bill amends Va. Code Ann. § 55-248.34:1, Landlord's acceptance of rent with reservation, under the Residential Landlord and Tenant Act, to provide that, in cases of unlawful detainer, if a tenant's payment of all (i) rent due and owing as of the court date as contracted for in the rental agreement, (ii) other charges and fees as contracted for in the rental agreement, (iii) late charges contracted for in the rental agreement, (iv) reasonable attorney fees as contracted for in the rental agreement or as provided by law, and (v) costs of the proceeding as provided by law has not been made as of the return date for the unlawful detainer, the tenant may pay to the landlord, the landlord's attorney, or the court all amounts claimed on the summons in unlawful detainer, including current rent, damages, late fees, costs of court, any civil recovery, attorney fees, and sheriff fees, no less than two business days before the date scheduled by the officer to whom the writ of eviction has been delivered to be executed. Any payments made by the tenant shall be by cashier's check, certified check, or money order.

DEFAULT SERVICING

CASE LAW

Bankruptcy – Value of collateral

CASE NAME: *In re Landrum*
DATE: *06/11/2018*
CITATION: *United States Bankruptcy Court, S.D. Mississippi. Slip Copy 2018 WL 6978762*

In September 2013, Michael Wayne Landrum borrowed $106,360.00 from 21st Mortgage to buy a 2012 manufactured home, granting 21st Mortgage a security interest in the Home. The Landrums did not own the real property, and the Home was not attached by a permanent foundation.

Approximately four years later, the Landrums filed a Chapter 13 Bankruptcy. 21st Mortgage filed a proof of claim for $100,539.74. The Landrums proposed to pay only $35,868.23 over the life of the Plan. 21st Mortgage objected to the Plan.

According to the Court, when the collateral is personal property, the value of the claim is based on the replacement value of the property, which, "with respect to property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." Here, the Home was personal property acquired for personal, family, or household purposes.

The Creditor's Expert appraised the Home with a base value of $66,152.00 from the NADA guide. Factoring in a 97% multiplier for the Home's location in Mississippi and a 111% multiplier for its "good" condition as determined by physical inspection, then adjusting downward for the cost of needed repairs and upward for various components and accessories, the Creditor's Expert calculated the Home's replacement value as $77,600.00.

The Debtors' Expert appraised the Home by the market approach, in which she used the Multiple Listing Service (MLS) to search through tens of thousands of manufactured homes, looking for sold listings similar to the Home in age, size, and location. She compared the photos and descriptions in the MLS to the Home's features as evaluated on physical inspection and identified three comparables. Assessing the Home's condition as "fair" to "average," she valued the Home at $45,000.00,

The Debtors' Expert acknowledged that the MLS does not include sales at manufactured home lots or dealerships. But where, as here, a manufactured home is not attached to the land by a permanent foundation, valuation that

does not consider retail sales might not yield replacement value. Further, the Debtors' Expert testified that her estimate was not replacement value. Because the standard under § 506(a)(2) is replacement value, the Court rejected the value calculated by the Debtors' Expert.

The opinion of the Debtors' Expert was, however, relevant to determining the Home's condition. Landrum's opinion of the Home's condition was also relevant.

Considering Landrum's opinion as well as the passage of time between the two appraisals, the Court concluded that the Home was in "average" condition. The replacement value of the Home in average condition was $70,500.00, calculated by applying a 100% multiplier instead of a 111% multiplier, as the Creditor's Expert described.

CASE LAW

Foreclosure – FDCPA

CASE NAME: *Scott v. Trott Law, P.C.*
DATE: *01/11/2019*
CITATION: *United States Court of Appeals, Sixth Circuit. --- Fed.Appx. ----. 2019 WL 169237*

Bank of America, N.A. retained Trott Law, P.C. as a debt collector to manage foreclosure proceedings on Scott's mortgage due to nonpayment.

In compliance with the FDCPA, Trott sent a Fair Debt Letter to Scott informing him Trott was a debt collector acting for BANA to foreclose on Scott's mortgage.

Trott arranged a sheriff's sale for November 8, 2016. Pursuant to Michigan law, Trott prepared a Notice of Mortgage Foreclosure Sale (Notice) to be posted on the premises of Scott's home and published for four consecutive weeks in a newspaper in the county of Scott's residence. Trott mailed a copy of the Notice to Scott. On October 8, Scott sent a certified letter to Trott disputing the validity of the debt. Trott received the Dispute Letter on October 11.

Trott claimed that after receiving the Dispute Letter it ceased collection of the debt and contacted its BANA to confirm the debt's validity. The Notice, however, was posted on the premises on October 14 and published in the newspaper on October 14, 21, and 28. Trott did not send Scott a verification of the debt. Scott claimed he tried to contact Trott but that it would not respond to his communications.

Scott filed suit against Trott including a motion for a temporary injunction to enjoin the sheriff's foreclosure sale and on November 7, hours prior to the hearing on the motion for the preliminary injunction, Scott filed Chapter 13. The scheduled sheriff's foreclosure sale did not take place, and the motion for an injunction was stayed pending verification of the debt.

Scott alleged violations of the FDCPA (Count 1), violation of RESPA (Count 2), unreasonable collection efforts under Michigan Law § 339.918(e)(2) (Count 3), Fraud and Misrepresentation (Count 4), Intentional Infliction of Emotional Distress (Count 5), and violation of civil rights under 42 U.S.C. § 1981 (Count 6).

The district court granted summary judgment on the FDCPA claim to Trott, holding that as a matter of law, the FDCPA did not require that Trott verify the debt and that Trott had "cease[d] collection of the debt" pursuant to the statute because Trott itself performed no more activity. The court dismissed Counts 2-6, holding that Scott failed to state sufficient facts or make allegations with sufficient particularity to state any claim. Scott appealed with respect to the FDCPA claim only.

The Court found that the FDCPA's requirement that a debt collector must "cease collection of the debt" after receiving a Dispute Letter required Trott to stop the subsequent newspaper publications from appearing, stop the home posting from occurring, and stop the sheriff's sale from taking place.

The district court's summary judgment with respect to the FDCPA claim was reversed and the case remanded. The remaining portions of the judgment were affirmed.

CASE LAW

FDCPA – "Debt collector"

CASE NAME: *Rawls v. Wells Fargo Bank, N.A.*
DATE: *01/23/2019*
CITATION: *United States District Court for the Middle District of Florida, Tampa Division. LEXIS 11102*

The Rawlses took out a mortgage with Wachovia to purchase a property. Additionally, the Rawlses obtained a home-equity line of credit from Wachovia, which was secured by the same property. Wells Fargo merged with Wachovia and acquired the Rawlses' loans. With Wells Fargo's approval, the property was sold through a short sale in 2012. Both the mortgage and the home-equity loan were satisfied using the proceeds from the short sale. Wells Fargo filed a "Satisfaction/Release of Mortgage" in the county clerk's office declaring the loans satisfied.

In an unrelated transaction, Fournier took out a mortgage with Wells Fargo to purchase a different property. Additionally, Fournier later took out another mortgage with Wells Fargo.

With Wells Fargo's approval, the property was sold through a short sale. Both mortgages were satisfied using the proceeds from the short sale.

In October of 2017, both the Rawlses and Fournier received letters from Wells Fargo, which referenced the loan numbers associated with their previously satisfied loans.

According to the Rawlses and Fournier, by sending these letters "Wells Fargo illegally collected or attempted to collect on the loans by systematically misrepresenting the status of the loans, obligations under the loans, and initiated debt collection procedures to pressure Plaintiffs and other Class members to pay on the unenforceable loans." The Rawlses and Fournier initiated a proposed class action seeking declaratory relief and damages under both the FDCPA and Florida Consumer Collection Practices Act. Wells Fargo moved to dismiss.

The Court found that the Complaint failed to provide any allegations that Wells Fargo was a debt collector. The Complaint did not allege the principal purpose of Wells Fargo's business was collecting debts. Nor did it allege Wells Fargo regularly attempts to collect the debts of others. In fact, the Complaint alleged the loans belonged to Wells Fargo. As such, Wells Fargo is excluded from the definition of a debt collector under Section 1692a(6)(F).

Count I was therefore dismissed with prejudice.

Since there were no remaining grounds for the Court's exercise of original jurisdiction, the Court declined to exercise supplemental jurisdiction over the state law claims.

CASE LAW

Foreclosure – Standing

CASE NAME: *US Bank NA v Nelson*
DATE: *01/24/2019*
CITATION: *Supreme Court of New York, Appellate Division, Second Department. LEXIS 489*

The Court found that the borrowers waived the issue of whether a bank lacked standing to commence a foreclosure action because the borrowers' mere denial in their answer that the bank was the owner and holder of the note, without more, was insufficient to assert that the bank lacked standing, thereby preserving the issue for adjudication. The Court also found that, to the extent that *Bank of Am., N.A. v. Barton*, 149 AD3d 676, *Nationstar Mtge., LLC v. Wong*, 132 AD3d 825, *Bank of Am., N.A. v. Paulsen*, 125 AD3d 909, and *U.S. Bank N. A. v. Faruque*, 120 AD3d 575, held otherwise, they should no longer be followed.

Noting that, in opposition to the Nelsons' cross motion, the plaintiff submitted affidavits of service demonstrating that the Nelsons each were properly served with the requisite notice pursuant to N.Y. Real Prop. Acts Law §1303. The plaintiff's showing was sufficient to establish that the RPAPL 1303 notices served on the Nelson complied with the statute. The conclusory and unsubstantiated denials of service by the Nelsons lacked the factual specificity and detail required to rebut the presumption of proper service created by the process server's affidavits of service.

The Court affirmed the lower court's grant of a foreclosure judgment to the plaintiff.

CASE LAW

Foreclosure – Acceleration

CASE NAME: *Sims v. RoundPoint Mtge. Servicing Corp.*
DATE: *01/28/2019*
CITATION: *United States Court of Appeals for the Fifth Circuit. LEXIS 2803*

Sims executed a home equity loan promissory note and executed a Deed of Trust to secure the Note. There were no liens on the Property other than the one created by the Deed of Trust.

The Note and the Deed of Trust were made as a home equity loan under Article XVI § 50(a)(6) of the Texas Constitution. Therefore, the Note was non-recourse as to Sims.

RoundPoint acquired the loan's servicing rights.

When RoundPoint contacted Sims to discuss her delinquency, she informed RoundPoint that she was unable to make payments because she was unemployed.

RoundPoint sent Sims a "Notice of Default and Intent to Accelerate." and accelerated the Note. The state court granted the application for order allowing foreclosure, and foreclosure was set.

Sims filed Chapter 13. During the bankruptcy proceedings, RoundPoint agreed that its claim was overstated and an order was entered in the case reducing the delinquency by $12,345.08. Sims was unable to maintain her plan, and her bankruptcy was dismissed.

Following the dismissal, Sims sent RoundPoint "Qualified Written Requests." RoundPoint would respond with information it determined to be compliant with RESPA, and Sims would threaten to file suit if the purported QWR requests were not met.

On February 27, 2015, RoundPoint sent Sims notice of default and an intent to accelerate, seeking less than the total amount owed on the Note. No foreclosure took place.

Sims sued RoundPoint, seeking damages for violations of RESPA, the FDCPA, and the Texas Debt Collection Practices Act. Sims also sought a declaration that the lien on the Property was void and unenforceable, and a declaration of the amount due under the Note. The district court entered judgment in RoundPoint's favor. Sims appealed.

The Court found that notice of the kind sent by Round-Point to Sims in February 2015 constituted unilateral abandonment of acceleration, and thus, a reset of the statute of limitations under Texas law. However, the holder of a note may not unilaterally abandon acceleration if the borrower objects to abandonment or has detrimentally relied on the acceleration.

The Court found that the facts of this case did not show that Sims detrimentally relied on the acceleration. Sims received a benefit, not a detriment, from the acceleration and the subsequent Chapter 13 filing.

Furthermore, Sims failed to offer evidence that she objected to the abandonment of acceleration.

Because Sims merely mentioned the FDCPA without providing any citation to the statute or providing specific arguments in support of the claim she waived any unraised issues with respect to her FDCPA claim.

During the Chapter 13, RoundPoint's pre-petition proof of claim was reduced by $12,345.08 via agreement. Sims argued that the Magistrate Judge erred in concluding that RoundPoint's failure to reduce the amount owed when attempting to collect on the Note was not a false or misleading statement. The Court found that Sims' argument failed because the bankruptcy petition was dismissed.

Affirmed.

CASE LAW

Foreclosure – Strict compliance

CASE NAME: *Thompson v. JPMorgan Chase Bank, N.A.*
DATE: *02/08/2019*
CITATION: *United States Court of Appeals for the First Circuit. LEXIS 3989*

Chase sent default and acceleration notices to the Thompsons concerning their mortgage. The notices explained to the Thompsons that they had "the right to reinstate after acceleration of the Loan and the right to bring a court action to assert the nonexistence of a default, or any other defense to acceleration, foreclosure, and sale." The notices also said the Thompsons could "still avoid foreclosure by paying the total past-due amount before a foreclosure sale takes place."

The Thompsons failed to cure the default. Chase foreclosed on the property and conducted a foreclosure sale. The Thompsons sued Chase for breach of contract and violating the statutory power of sale Massachusetts affords mortgagees, alleging Chase failed to comply with the notice requirements in their mortgage before foreclosing on their property. The district court granted Chase's motion to dismiss for failure to state a claim. The Thompsons appealed.

The Court found that, because Massachusetts does not require a mortgagee to obtain a judicial judgment approving foreclosure of a mortgaged property, Massachusetts courts require mortgagees to comply strictly with two types of mortgage terms: (1) terms directly concerned with the foreclosure sale authorized by the power of sale in the mortgage and (2) terms prescribing actions the mortgagee must take in connection with the foreclosure sale-- whether before or after the sale takes place.

According to the Court, at first glance, Chase's acceleration and default notice appears to comply strictly with paragraph 22 in the Thompsons' mortgage. By its terms, paragraph 22 required Chase to "inform [the Thompsons] of the right to reinstate after acceleration."

However, because paragraph 19, which defines the Thompsons' post-acceleration reinstatement right, imposes conditions and time limitations on that right, Chase failed to comply strictly with paragraph 22's notice requirement by failing to inform the Thompsons of the conditions and limitations on the reinstatement right.

Here, the notice's additional language--"you can still avoid foreclosure by paying the total past-due amount before a foreclosure sale takes place"--could mislead the Thompsons into thinking that they could wait until a few days before the sale to tender the required payment. However, under paragraph 19 a tender must be made at least five days before the sale.

Despite the absence of a claim of actual prejudice, the strict-compliance requirement invalidated the foreclosure. The judgment was reversed, and the case remanded.

BULLETIN

Maryland
Foreclosure

Issued 12/31/2018.

Maryland Foreclosure Registration System – New Requirements For Foreclosed Property Registrations.

On January 2, 2019, the Maryland Foreclosure Registration System began accepting foreclosed property registrations. The Foreclosure Registration System will have an integrated foreclosure registry, which will replace the current online Foreclosed Property Registry (referred to in this advisory as the "legacy registry" or "legacy Foreclosed Property Registry"). The legacy Foreclosed Property Registry will be phased out by the end of January 2019. NOTE: The December 7, 2018 advisory named January 1 as the official start date for this new functionality; however because January 1 was a state holiday, the actual start date was January 2, 2019.

Beginning January 2, 2019 all initial foreclosed property registrations must be submitted using the Foreclosure Registration System. Registrations must also be updated by the foreclosure purchaser pursuant to RP §14–126.1(d)(5). A procedural notice regarding this requirement is incorporated in the submission process for all initial registrations in the Foreclosure Registration System. Instructions for updating initial registrations will be in the revised System User Guide, available on January 2, 2019.

LEGISLATION

New Jersey

Adverse liens – Stormwater utilities

2018 NJ S 1073. Enacted 1/31/2019. Effective 7/30/2019.

This bill provides that the governing body of any county or municipality may, by resolution or ordinance, as appropriate, establish a stormwater utility for the purposes of acquiring, constructing, improving, maintaining, and operating stormwater management systems in the county or municipality, consistent with State and federal laws, rules, and regulations.

Any stormwater utility that is established pursuant to this section shall be considered a "municipal public utility."

Any county, municipality, or authority that establishes a stormwater utility may charge and collect reasonable fees and other charges to recover the stormwater utility's costs for stormwater management. These fees and other charges may be charged to and collected from the owner or occupant, or both, of any real property from which originates stormwater runoff which directly or indirectly enters the stormwater management system or the waters of the State. The owner of any such real property shall be liable for and shall pay such fees and charges to the stormwater utility at the time when and place where the fees and charges are due and payable.

In the event that a stormwater utility fee or charge of any county, municipality, or authority with regard to any parcel of real property is not paid when due:

a. interest shall accrue and be due to the county or authority on the unpaid balance at the rate of one and one half percent per month until such fees and charges, and the interest thereon, shall be fully paid to the county or authority;

b. the unpaid balance thereof and all interest accruing thereon shall be a lien on such parcel enforced in the same manner as delinquent property taxes and municipal charges. Such lien shall be superior and paramount to the interest in such parcel of any owner, lessee, tenant, mortgagee, or other person except the lien of State taxes and property taxes and shall be on a parity with and deemed equal to the lien on such parcel of State taxes and property taxes.

PRESS RELEASE

New York

Abandoned property - Maintenance

Issued 1/19/2019.

DFS Fines SN Servicing Corp. $100,000 For Violations Of Vacant And Abandoned Property Law.

The properties were brought to the Department's attention by the local fire department, which filed a complaint that both properties were vacant and not being maintained. Although the properties were not registered as required, DFS was able to identify SN Servicing as the responsible servicer. In August 2017, DFS issued notices to SN Servicing that the properties were not in compliance with the requirements of the law and required a response from SN Servicing within 14 days.

SN Servicing responded by refusing to maintain the properties because, it claimed, the mortgagee would not authorize such maintenance. SN Servicing later claimed that the properties were not subject to the requirements of the law because lien releases, executed in April 2018 but backdated to July 2017, extinguished its maintenance obligation. Neither of the reasons offered by SN Servicing excused its failure to maintain the properties.

SN Servicing, in addition to the significant fine, will provide confirmation to DFS within 30 days that all properties subject to the requirements of New York's Vacant and Abandoned Property Law have been registered with the DFS registry of vacant and abandoned properties, are being maintained and that all quarterly filings have been made for each property. In addition, SN Servicing will provide the same confirmation to DFS on a bi-monthly basis, along with inspection reports and maintenance records.

Note: This makes the total reported fines issued by the DFS in connection with the Vacant and Abandoned Property Law $219,000, for three properties.

FAQ
North Carolina
Servicing

The updated FAQ includes:

Q: Does a company need to be licensed as a lender or servicer to sell or purchase residential mortgage loans on the secondary market?

A: Although a license is not required to sell or purchase such loans on the secondary market, a buyer who intends to service North Carolina residential mortgage loans must be licensed as a servicer or be exempt under the NC SAFE Act.

There is no de minimus servicing exemption in North Carolina. A "master servicer" is a company that contracts with a third party to service residential mortgage loans on its behalf. The third-party servicer is a sub-servicer. In North Carolina, master servicers and sub-servicers must hold a servicer license under the NC SAFE Act.

REPORT
CFPB
RESPA servicing

Issued 1/10/2019.

2013 RESPA Servicing Rule Assessment Report.

On January 1, 2019, the Bureau issued its Assessment Report of the Mortgage Servicing Rule pursuant to Section 1022(d) of the Dodd-Frank Act, which requires an assessment and report to be published within five years of the effective date of the rule or order.

The full report can be found here: https://files.consumerfinance.gov/f/documents/cfpb_mortgage-servicing-rule-assessment_report.pdf

INSTALLATION

ADOPTED RULE
Kentucky
Inspections - Retailers

Effective 1/4/2019, this rule amends 815 Ky. Admin. Regs. 25:050.

The rule amends a manufactured home retailer's Required Records, to require:

Unit Inspection, Form HBC MH-16 (formerly, Form HBCMH 40);

Monthly Manufactured Home Dealer Certification Form, Form HBC MH-7 (formerly, Form HBCMH 23).

The amended rule provides that the department may make random inspections, prior to or after installation of a used home.

Formerly, the rule provided: the office may make random inspections, prior to or after installation.

The rule, in several places, refers to the minimum installation requirements contained in the federal act. Formerly, the rule did not refer to "the federal act."

The rule adds a new section to provide the requirements for a certified retailer, including that the retailer must employ at least one (1) installer certified in accordance with 815 KAR 25:080; and certify to the department that the dealership is capable of performing minor maintenance to the following systems of manufactured homes:

1. Plumbing;

2. Heating;

3. Cooling;

4. Fuel-burning; and

5. Electrical; and

A certified retailer must also complete and submit Form HBC MH/RV-2 to the department.

The rule provides that a used manufactured home or mobile home requiring a new seal shall be inspected by a state inspector or a certified retailer. The state inspector or certified retailer shall affix a B1 seal indicating the manufactured home's or mobile home's compliance or noncompliance with the federal act under which the home was constructed.

The rule includes the items that must be inspected.

The rule also provides for inspection of used homes in a manufacturer's or retailer's possession.

The rule deletes the section providing that a retail license shall not be required of a developer who purchases new HUD homes from a licensed Kentucky retailer, places the homes on a parcel of land, and offers the homes for sale to ultimate consumers, if the certain conditions were met.

A retailer who possesses a used manufactured home or mobile home without a B seal, shall apply to the department for a B seal prior to offering the manufactured home or mobile home for resale. The application shall be:

(a) Filed on Form HBC MH-12; and

(b) 1. Accompanied by a request for an inspection; or

2. Accompanied by notification that a certified retailer will conduct the inspection.

The rule provides for the placement of B seals.

A used home with a B2 seal shall not be resold unless the purchaser executes Form HBC MH-8.

The requirement that a retailer inspect and apply B seals to each home before it is sold shall not apply if the resale is between retailers.

Kentucky
Site preparation – Installation - Inspections

Effective 1/4/2019, this rule amends 815 Ky. Admin. Regs. 25:090, Site preparation, installation, and inspection requirements (formerly, Site preparation, and installation minimum requirements).

The rule provides that:

Site preparation, installation, and ground anchoring shall be performed for:

(a) A new manufactured home in accordance with the manufacturer's instructions, if available, or 24 C.F.R. Part 3285; and

(b) A used manufactured home or a mobile home in accordance with the manufacturer's instructions, if available, or ANSI A225.1, Manufactured Home Installation, as established by KRS 227.570(3).

Formerly, the rule provided that site preparation, installation, and ground anchoring of a new home or a used home with a B1 seal shall be performed in accordance with KRS 227.570(3).

Only a certified installer shall install a manufactured home or mobile home.

All exterior electric, water, and sewer connections and additions to a manufactured home or mobile home shall be performed in accordance with the Kentucky Residential Code, as incorporated by reference in 815 KAR 7:125.

Responsibility for installation services. A retailer shall:

(a) Perform installation services, if the retailer is a certified installer or employs a certified installer; or

(b) Contract with an independent certified installer to perform installation services.

Responsibilities upon the execution of a contract of sale of a new manufactured home. A retailer shall:

(a) Submit an application to the department that contains the following information:

1. Name, address, and telephone number of the purchaser;

2. Address of the manufactured home, if different from the purchaser's address;

3. Date of purchase;

4. United States Department of Housing and Urban Development certification label (HUD tag) number;

5. Serial number of the new manufactured home;

6. Date of installation; and

7. Name and certification number of the certified installer.

The retailer shall supply the purchaser with Form HBC MH-17 (formerly, Form KMH 102).

Closing documents for the sale of a new manufactured home shall include the following:

1. A notice, on a form provided by the department, advising the purchaser that inspection of the new manufactured home's installation is required; and

2. The consumer disclosure as required by 24 C.F.R. Part 3286.7.

An unlicensed retailer shall not sell or offer for sale more than one (1) manufactured home or mobile home in any consecutive twelve (12) month period.

By no later than ten (10) days after the sale of a manufactured home or mobile home by an unlicensed retailer, the unlicensed retailer shall notify the department in writing of specified information.

The retailer shall do the following:

1. Coordinate with the department to schedule the site and footer inspection.

2. Provide the manufacturer's footing design to the department for review at least five (5) working days prior to the department's inspection of the site and footer location,

3. Not commence, or cause to commence, any installation services other than the site and footer location preparation until the department has completed its inspection and issued approval of the site preparation and footer location preparation.

Before the new manufactured home is set, the department shall inspect:

1. The site preparation; and

2. The location intended for the methods and materials used to protect against frost heave in accordance with the manufacturer's installation instructions and this administrative regulation.

LENDING

CASE LAW

Usury – Lease

CASE NAME: *Danger v. Nextep Funding, LLC*
DATE: *01/23/2019*
CITATION: *United States District Court for the District of Minnesota. LEXIS 11103*

LuAnn Danger purchased a puppy from Premier Pups. Premier Pups offered the dog for sale at a price of $1,381.89.

Danger financed the purchase through Defendants. Defendant Nextep is a for-profit company that "offers a retailer to customer closed end consumer lease platform designed to increase retailer sales by offering customers the ability to finance goods and services on the spot, in the store and without delay." Defendant Monterey Financial Services, LLC is a for profit company that "offers a host of services related to loan servicing, debt recovery, and consumer finance" in order to "meet the needs of niche businesses and consumers . . . ."

Danger entered into an agreement with Nextep which allowed her to take possession of the dog in exchange for 24 monthly payments of $138.28, plus fees. The parties disputed whether the Agreement was a consumer lease or credit sales agreement.

Danger filed suit, asserting claims under: (1) the Consumer Leasing Act ("CLA"), 15 U.S.C. § 1667 et seq., and Regulation M; (2) TILA") and Regulation Z"; and (3) Minnesota law prohibiting usurious contracts, Minn. Stat. § 334.01. She asserted that Nextep falsely disclosed the total amount of periodic payments owed under the Agreement. She alleged both Defendants failed to adequately disclose: (1) the finance charge; (2) the finance charge expressed as an annual percentage rate; and (3) the "total of payments." Danger asserted that Defendants concealed "the exorbitant annual percentage rate" of 120% that applied to her purchase. Finally, Plaintiff asserted claims of usury arising under Minnesota state law against both Defendants.

The Court found that, assuming that Spokeo's standing requirements apply to claims under the TILA, the allegations here satisfied the requirement of a concrete injury-in-fact. Danger alleged that she would have pursued alternative funding, had Defendants disclosed the actual interest rate.

Also, she alleged that her injury was ongoing because she still owed Defendants the remaining balance of payments on the dog. Her allegations of an ongoing injury were sufficient to establish standing for injunctive relief.

The Court also found that Plaintiff plausibly alleged a violation of the CLA against Nextep. Section 2 of the Agreement contains information that a consumer might view as conflicting and confusing, as it states that "[t]he Total of your monthly payments is $138.20" and the "Total of Payments" is $3318.73.

The Court also found that Danger sufficiently alleged a TILA claim against Monterey. Danger specifically alleged that Monterey is a creditor, offering a "host of services," and positing itself as a non-traditional lender. In addition, Danger reiterated that the Agreement identified Monterey as the payee for Plaintiff's payments owed.

The Court further found that Danger adequately pleaded her usury claim. She alleged that Defendants violated Minn. Stat. § 334.01 by charging an APR in excess of 120%, which exceeds the 8% limit allowed under Minnesota law for a personal debt. She further contended that Defendants intended to evade the operation of the statute by styling the Agreement as a lease contract, rather than a consumer credit sale.

Defendants' motions to dismiss denied.

CASE LAW

FCRA – Disclosures

CASE NAME: *Gilberg v. Cal. Check Cashing Stores, LLC*
DATE: *01/29/2019*
CITATION: *United States Court of Appeals for the Ninth Circuit. LEXIS 2940*

The Court held that an employer violated the standalone requirement of the FCRA and state law because under *Syed*, the standalone requirement foreclosed implicit exceptions, and the employer's disclosure contained extraneous and irrelevant information beyond what FCRA itself required, particularly as much of the surplusage in the employer's disclosure form did not effectuate the purposes of FCRA and the presence of the extraneous information was as likely to confuse as it was to inform.

In addition, although the employer's disclosure was conspicuous since it was capitalized, in bold print, underlined, and legible, the employer's disclosure form was not clear, as required by the FCRA and state law, because it contained language that a reasonable person would not understand and the disclosure would confuse a reasonable reader since it combined federal and state disclosures.

ADOPTED RULE

Iowa

Military home ownership

Effective 3/6/2019, this rule amends Iowa Admin. Code r. 265-27.2 regarding Military Service Member Home Ownership Assistance, to add the definition of "manufactured home" and amend the definition of "qualified home" to exclude requirements that the manufactured home be attached to a permanent foundation and be taxed as real estate.

TEMPORARY RULE ADOPTION

Nevada

Notarization

This rule adopts Nev. Admin. Code § 240.200 - .250 to establish provisions governing electronic notarizations.

Upon an applicant's meeting the qualifications for registration as an electronic notary public, the Secretary of State shall cause the registration to be updated to allow the applicant to perform electronic notarial acts.

The electronic seal used by an electronic notary public affixed to an electronic document during an electronic notarial act must include information required in NRS 240.040 and shall generally conform to the size and other requirements of a seal used by a traditional notary except:

I. That once the electronic seal, electronic signature and electronic notarial certificate are affixed and the electronic notarial act is complete, the document is rendered tamper- evident; and

2. If the electronic notarial act is performed by audio-video communication, a statement that the electronic notarial act was performed by means of audio-video communication and substantially conforming to “Notarial act performed by audio-video communication” must appear adjacent to the stamp or in the notarial certificate.

REPORT

CFPB

Qualified mortgage assessment

Issued 1/10/2019.

Ability-to-Repay and Qualified Mortgage Rule Assessment Report.

On January 10, 2019, the Bureau issued its Assessment Report of the ATR/QM Rule pursuant to Section 1022(d) of the Dodd-Frank Act, which requires an assessment and

report to be published within five years of the effective date of the rule or order. The full report can be found here: https://files.consumerfinance.gov/f/documents/cfpb_ability-to-repay-qualified-mortgage_assessment-report.pdf

FINAL RULE
CFPB
Civil penalties

84 Fed. Reg. 517 (1/31/2019)

Civil Penalty Inflation Adjustments.

This rule was effective on January 31, 2019.

The Bureau of Consumer Financial Protection (Bureau) is amending its rule that specifies the time period for which adjusted civil penalty amounts would be applied to conduct within its jurisdiction and is also adjusting specific civil penalty amounts in that rule to account for inflation.

For the 2019 annual adjustment, the multiplier reflecting the ''cost-of-living adjustment'' is 1.02522. Pursuant to the Inflation Adjustment Act and OMB Guidance, the Bureau multiplied each of its civil penalty amounts by the ''cost-of-living adjustment'' multiplier and rounded to the nearest dollar.

FINAL RULE
Federal Agencies
Flood hazards

Loans in Areas Having Special Flood Hazards

This rule is effective on July 1, 2019.

The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), the Farm Credit Administration (FCA), and the National Credit Union Administration (NCUA) are amending their regulations regarding loans in areas having special flood hazards to implement the private flood insurance provisions of the Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters Act). Specifically, the final rule requires regulated lending institutions to accept policies that meet the statutory definition of "private flood insurance" in the Biggert-Waters Act; and permits regulated lending institutions to exercise their discretion to accept flood insurance policies issued by private insurers and plans providing flood coverage issued by mutual aid societies that do not meet the statutory definition of "private flood insurance," subject to certain restrictions.

LICENSING

CASE LAW
Consumer loans – Statute of limitations

CASE NAME: *Price v. Murdy*
DATE: *12/18/2018*
CITATION: *Court of Appeals of Maryland. LEXIS 690*

Two Plaintiffs, consumers who financed the purchase of automobiles through loans under $6,000, brought a putative class action against the lender, Samuel Spicer, for violations of the Maryland Consumer Loan Law ("MCLL"). Plaintiffs alleged that Spicer was not licensed to enter into these loans under the MCLL. Plaintiffs further alleged that Spicer violated the MCLL by: (1) failing to provide any notices related to repossession of cars; (2) charging and collecting compound interest; and (3) charging and collecting inflated or uncollectable attorneys' fees.

All of the loan transactions occurred over three years before this suit was filed. The general statute of limitations for civil actions is three years. Md. Code Ann., Cts. & Jud. Proc. § 5-102(a)(6), however, provides a twelve-year statute of limitations for causes of action brought under a specialty statute.

The District Court determined that the limitations issue involved a question of unresolved Maryland law and, therefore, certified the following question to the Court:

Whether the MCLL § 12-302's licensing requirement is an "other specialty" subject to Maryland's twelve-year limitations period under Md. Code Ann., Cts. & Jud. Proc. § 5-102(a)(6)?

According to the Court, the MCLL's many statutory protections—a licensing requirement; limitations on the amount of interest, fees, points, commissions, and other charges; and disclosure requirements—were created and imposed solely by the statute, not by common law.

Nor is Md. Code Ann., Comm. Law § 12-302 a mere vehicle for regulating usury, thus prescribing the manner in which a common law duty must be fulfilled. First, the licensing requirement is silent as to usury. Second, the legislature gave other reasons for its regulation of small consumer loans.

Also, the MCLL's damages, by applying clear statutory criteria, are readily ascertainable.

The Court found that that the MCLL's licensing requirement is an "other specialty" within the meaning of CJP § 5-102(a)(6) and that a claim brought on it is entitled to a twelve-year limitations period.

ADOPTED RULE
Kentucky
Retailers – Park trailers

Effective 1/4/2019, this rule amends 815 Ky. Admin. Regs. 25:020 to establish the requirements for retailers to obtain a license to sell recreational vehicles and the standards for certification of manufacturers of recreational vehicles.

"Recreational vehicle" means as defined by KRS 227.550(14), the HUD Act in 24 CFR, Parts 3280, 3282 and 3283, and defined herein as "park trailers."

ADOPTED RULE
Kentucky
Retailers - Installers

Effective 1/4/2019, this rule amends 815 Ky. Admin. Regs. 25:060, Licensing and certifications with manufactured homes and mobile homes.

The rule deletes the requirement that a retailer license application include a verified statement that the applicant complies with zoning and other requirements of the local government necessary for a business to operate legally.

The rule provides that a retailer shall complete and maintain Form HBC MH-7 for each new or used manufactured home or mobile home sold (formerly, Form HBCMH 23).

The rule adds the requirements for issuance of a manufacturer's certificate of acceptability.

The rule also adds the requirements for certified installers.

A certified installer who installs a manufactured home or mobile home in accordance with KRS 227.570(3) and this administrative regulation shall place a certified installer seal on the home.

The rule provides that certified installer seals shall be obtained from the department.

One part of the certified installer seal shall be placed two (2) inches above the HUD label on the outside left corner of a manufactured home or on the outside left corner of a mobile home if a HUD label is not required; and

One part shall be placed on the inside of the electrical panel in the manufactured home.

A certified installer shall send the department a monthly report of the information found in HBC MH 40-30 by mail, electronic mail, or facsimile.

ADOPTED RULE
Kentucky
Mediation

Effective 1/4/2019, this rule amends 815 Ky. Admin. Regs. 25:100. Alternative dispute resolution and mediation program.

The rule provides that a consumer, applicant, or a licensee subject to disciplinary action under KRS 227.640, may request mediation prior to a formal hearing under KRS Chapter 13B.

Formerly: A manufacturer, certified installer, or retailer of manufactured housing whose application, certification, or license is subject to disciplinary action under KRS 227.640, may request mediation prior to the convening of a formal hearing under KRS Chapter 13B.

Mediations shall be conducted by the Office of Administrative Hearings within the Public Protection Cabinet (formerly, the Attorney General mediators).

ADOPTED RULE
Kentucky
Installers – Continuing education

Effective 1/4/2019, this rule adopts 815 Ky. Admin. Regs. 2:010, to establish the requirements for continuing education for, among others, certified installers of manufactured homes.

The rule provides that each certified installer shall provide proof of at least five (5) hours of continuing education prior to license renewal.

A licensee or certificate holder who accumulates more than the required annual number of continuing education hours may carry forward the excess credit hours into the two (2) successive educational years.

Carried forward credit hours shall be limited to a total of twelve (12) hours.

ADOPTED RULE
Kentucky
Repeal

Effective 1/4/2019, this rule adopts 815 Ky. Admin. Regs. 25:081, and repeals 815 KAR 25:070 and 815 KAR 25:080.

The necessary substantive provisions of these administrative regulations are concurrently being relocated into 815 KAR 25:060, so that all licensing and certification pertaining to manufactured housing is located in one user-friendly administrative regulation. 815 KAR 25:070 and 815 KAR 25:080 are being repealed so that the administrative regulations are not duplicative.

PRESS RELEASE
New York
Cybersecurity

Issued 1/31/2019.

DFS Superintendent Vullo Advises Regulated Entities Of Final Deadline For Implementing Protections Under DFS's Landmark Cybersecurity Regulation.

All Covered Entities Must Be in Full Compliance with the Cybersecurity Regulation by March 1, 2019[,which includes the provisions applicable to third-party service providers].

February 15, 2019 Compliance Certification Filing Deadline Is Approaching for Covered Entities to Submit a Statement of Compliance for the Prior Calendar Year.

All banks, insurance companies, and other financial services institutions and licensees regulated by DFS are now required to have a cybersecurity program in place that is designed to protect consumers' private data; a written policy or policies that are approved by the board

or a senior officer; a Chief Information Security Officer to help protect data and systems; protections of data at third-party providers; and controls and plans in place to help ensure the safety and soundness of New York's financial services industry. Covered entities and licensees must also report cybersecurity events to DFS through the Department's secure online cybersecurity portal.

Note: The sections of the rule addressing third-party service providers are the final provisions going into effect on March 1.

A "third-party service provider" is defined as "a Person that (i) is not an Affiliate of the Covered Entity, (ii) provides services to the Covered Entity, and (iii) maintains, processes or otherwise is permitted access to Nonpublic Information through its provision of services to the Covered Entity."

As a result, Covered Entities should evaluate and make any necessary adjustments to their relationships with third parties to bring themselves into compliance with the rule.

ADOPTED RULE
Rhode Island
Third party servicers

Effective 1/1/2019, this rule adopts 230-40 R.I. Code Regs § 10-2.

The rule, formerly known as Banking Regulation 6, sets forth the regulatory requirements for Lenders, Loan Brokers, Small Loan Lenders, Third-Party Loan Servicers and Mortgage Loan Originators in Rhode Island. The Department made the following substantive changes:

§ 2.2 – The regulation scope was expanded to include third-party service providers who service mortgages in Rhode Island.

§ 2.4 – A sentence was added to clarify that financial institutions, which are licensed under another portion of Title 19, do not also have to hold a third-party service provider license in order to service loans.

§ 2.5(B)(1)(b) – A section was added to reflect the fact that the Department has transitioned to an electronic licensing file and that annual statements must be uploaded to that system rather than filed with the Department in hard copy.

§ 2.5(C) – The third-party servicer bond, provided for in R.I. Gen. Laws § 19146(a) (9), was added to the regulation. In addition, the section concerning additional bonds for branches was removed to lessen the burden on the licensee.

§ 2.5(D) – The section has been rewritten to clarify the requirements for Qualified Individuals and Branch Managers depending upon the type of license and the activity undertaken.

It includes the provision that Lenders and Loan Brokers whose main office listed in NMLS is that of a headquarters where no licensable activity is conducted and whose address will not be held out to the public in any way, including on loan documents and advertising is not required to designate a RI licensed MLO as the Qualified Individual but must meet the requirements as stated in § 2.5(D)(3)(a) & (b) of this Part.

§ 2.5(G) – This section has been rewritten to remove the submission requirements that were necessary prior to the transition to electronic background checks in NMLS.

§ 2.5(H) – This section has been amended to clarify the applicability of the statutory insurance claims agency designation to Third-Party Loan Servicers.

§ 2.7(C)(7) – Concerns an individual's financial responsibility. A sentence has been removed as the Department no longer requires this information for candidates with a Chapter 7 discharge.

The sentence read: For Chapter 7 discharges the Division will normally require a minimum of six months credit history after discharge.

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

The rule requires all documents, correspondence and account activity for each loan serviced, including but not limited to all attempted and/or completed contacts with each consumer, from onboarding date of loan service.

The rule provides that any licensee located outside of the United States must upload into the NMLS a signed, notarized statement that the licensee agrees that all records necessary for examination will be housed in the United States or will be provided to the Department for the purpose of conducting examinations and/or investigations.

TITLING AND PERFECTION

CASE LAW

Bankruptcy - Affixation

CASE NAME: *In re Lloyd*
DATE: *11/19/2018*
CITATION: *United States Bankruptcy Court, D. South Carolina. Slip Copy. 2018 WL 6984813*

The Debtor filed for Chapter 13 protections. The Debtor possessed a one-third equitable interest in real property. Debtor's Schedule A/B indicated that Debtor lived in a mobile home located on the property. The Mobile Home was Debtor's principal residence and part of the collateral securing the claim of Wilmington Savings.

The titled owner of record of the Mobile Home was not Debtor, but was Debtor's ex-wife. The Certificate of Title on record at the South Carolina Department of Motor Vehicles did not show that the Mobile Home had been retired or de-titled.

Wilmington Savings contended that 11 U.S.C. § 1322(b)(2) prohibited Debtor from modifying its claim because the claim was secured by a first mortgage lien on the real property and the Mobile Home, which served as Debtor's primary residence.

Debtor asserted that he could value Wilmington Savings' claim because the Mobile Home was not included in the property description of the Mortgage and was not a fixture.

Debtor claimed that the South Carolina De-titling Statute, S.C. Code §§ 56-19-500, et seq., preempted the common law test for determining whether a manufactured home was so affixed to real property so as to be treated as part of the land for purposes of a mortgage loan on the real property.

The Court found that the Statute established a procedure that an owner of a manufactured home may elect to follow to ensure that his home is treated as affixed. However, the Statute does not indicate that if an owner does not follow the procedure, then the home may not otherwise be considered affixed to real property. The Court found that the common law test may still be applicable in situations where the Statute is not followed.

Generally, under South Carolina law, mobile homes are treated as personal property and liens on mobile homes are required to be recorded on the certificate of title to be perfected. However, if a mobile home is sufficiently attached to real property such that it becomes a fixture, the mobile home may be subject to the mortgage encumbering the real property.

The test for determining whether a mobile home continues to be personal property or becomes a fixture considers the following factors: "(1) mode of attachment; (2) character of the structure or article; (3) the intent of

the parties making the annexation; and (4) the relationship of the parties."

First, the Mobile Home appeared to be attached to the real property by a block pier foundation. A 2006 Appraisal noted that the Mobile Home was "not permanently affixed" and had not been "converted to real property." Because a block pier foundation is not a type of permanently affixed foundation, this factor weighed in favor of Debtor.

Second, the Mobile Home was connected to water and electricity, and improved with an addition, a screened porch, and a deck. It may be difficult to remove the Mobile Home without causing damage to the structure. This factor weighed in favor of Wilmington Savings.

As to intent, when Debtor granted a mortgage lien on the real property in 2006, Debtor did not specifically grant a lien on the Mobile Home in the Mortgage or any other loan document. While the Mortgage contained a clause providing that "all improvements now or hereafter erected on the property" were included within the definition of the "Property" covered by the Mortgage, the Mobile Home could not be considered "erected" on the real property because it was manufactured elsewhere.

There was no mention of the Mobile Home or any "fixtures" in the legal descriptions contained in the Note or Mortgage or other Loan closing documents. In addition, although the Court did not consider the South Carolina De-titling Statute to prescribe the exclusive way for a mobile home to be considered part of real property, it was noteworthy that Debtor did not follow the statute's procedure in place at the time to de-title the Mobile Home. The Court concluded that Debtor intended that the Mobile Home remain personal property.

Finally, Debtor did not deal directly with Wilmington Savings, the current holder of the Mortgage, in his purchase of the Mobile Home or the Mortgage of the property. Thus, this factor was neutral.

The Court found that the Mobile Home was not sufficiently affixed to real property to be deemed to be real property. As such, the Court found that the Mobile Home remained personal property and was separate collateral for the Loan. A further hearing was necessary for the parties to address the value of the Mobile Home.

The Trustee's motion for summary judgment denied.

BULLETIN

Ohio

New form

Beginning January 2019, the Ohio Bureau of Motor Vehicles will introduce a new Ohio Certificate of Title. The new titles will be phased in county by county over several months.

The primary differences between the old title and the new title include the size, color, layout and amount of information and/or instruction included. Both titles are still valid and may be used to sell, transfer or register motor vehicles.

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