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 February 2019 Manufactured Housing Law Update.

March Madness is in full swing. If your bracket is already in the same shape as ours, this update should have plenty for you to turn your attention to.

Items of interest this month include items related to deposits in North Dakota (security deposits for rentals) and Texas (retailer deposits).

In addition, Arkansas amended its Fair Mortgage Lending Act to provide for a retailer exemption with language similar to US S 2155.

There are also amendments related to titling in Iowa and Wyoming.

These items and more. So, read on!

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COMMUNITIES

ADOPTED RULE
Illinois
Water – Sewage – Electricity - Refuse

Effective 2/6/2019, this rule amends Ill. Admin Code tit. 77, §§ 860.10, .20, .110, .120, .130, .140, .150, .160, .200, .210, .220, .230, .240, .250, .260, .270, .280, .290, .300, .310, .320, .330, .340, .350-.540 non seq. and Appendix D, related to water supplies, sewage disposal systems, electrical systems and refuse disposal. A new Section related to enforcements is also added.

The rule amends Ill. Admin Code tit. 77, § 860.110, Applications, to delete the requirement that all permit applications be submitted in triplicate.

Ill. Admin Code tit. 77, § 860.120, Plans, has been amended to provide that the overall manufactured home community plan shall include the following details for all proposed construction:

4) The existing and proposed contours of the area, including an indication of any area in a flood plain and drainage away from the homes (adding, and drainage away from homes).

The rule provides that the typical manufactured home site plan shall include the following:

3) For private sewage disposal systems, detailed drawings of the proposed system showing the distances between components of the system and potable water systems or bodies of water, soil characteristics (formerly, type and/or percolation rates), depth of ground water table, and size of system components (When a permit for construction of a private sewage disposal system has been obtained or is pending from a unit of local government, a copy of the permit or permit application shall be submitted.).

The rule amends Ill. Admin Code tit. 77, § 860.150, Immobilization, to provide that, in order for a home to be considered immobilized, the following conditions must be met:

b) The wheels, tongue, and hitch shall be removed and the home shall be supported by a continuous perimeter foundation of material such as concrete, mortared concrete block, or mortared brick which extends below the established frost depth. The home shall be secured in accordance with the Manufactured Home Quality Assurance Act and Manufactured Home Installation Code. (Type A Violation) to the continuous perimeter foundation with 1/2 inch foundation bolts spaced every 6 feet and within one foot of the corners. The bolts shall be imbedded at least 7 inches into concrete foundations or 15 inches into block foundations.

Formerly, the second sentence above provided: The home shall be to the continuous perimeter foundation with 1/2 inch foundation bolts spaced every 6 feet and within one foot of the corners. The bolts shall be imbedded at least 7 inches into concrete foundations or 15 inches into block foundations.

The rule amends Ill. Admin Code tit. 77, § 860.200, Layout of the Manufactured Home Community, to add that sites shall be graded to prevent surface water or drainage from accumulating or going under the home.

Ill. Admin Code tit. 77, § 860.220, Streets and Parking, has been amended to provide:

a) All streets shall be maintained free (formerly, reasonably free) of potholes, snow, and dust.

The rule amends Ill. Admin Code tit. 77, § 860.270, Fire Safety, to provide that, if a hydrant is inadequate, the hydrant shall be repaired or replaced within 30 days.

The rule amends Ill. Admin Code tit. 77, § 860.300, Solid and Landscape Waste, to provide:

2) Bulk garbage containers must be stored on a concrete or asphalt (adding, on a concrete or asphalt, deleting, at least 6 inches off the ground) surface or on an impervious surface.

The rule amends Ill. Admin Code tit. 77, § 860.400, Required Documents, to provide:

b) The manufactured home community owner or manager shall provide, either in print or via electronic means (adding, either in print or via electronic means), a resident of each site with a copy of the Department's publication "Living in a Manufactured Home Community", which contains information regarding the requirements for installation (formerly, tiedown) of homes, safety tips in the event of a tornado, and a copy of the Mobile Home Landlord and Tenants Rights Act. (Type A Violation);

d) The name, address, and telephone number of the manufactured home community manager whom residents are to notify of a problem within the manufactured home community shall be provided to each resident. An answering machine or voicemail (adding, or voicemail) shall be connected to the manufactured home community manager's phone if someone is not normally available to answer the calls. (Adds) Complaints shall be responded to within 24 hours.

The rule adds Ill. Admin Code tit. 77, § 860.540, Administrative Monetary Penalties.

The rule repeals Ill. Admin. Code tit. 77 § 860, APPENDIX D Home Rule Units.

LEGISLATION
New Jersey
Stormwater

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.

LEGISLATION
North Dakota
Security deposits

2019 ND H 1150. Enacted 3/12/2019. Effective 8/1/2019.

This bill amends N.D. Cent. Code § 47-16-07.1 to add that a lessor may demand an amount or value up to two months' rent, as security, from an individual who has had a judgment entered against that individual for violating the terms of a previous rental agreement.

LEGISLATION
Virginia
Unlawful detainer

2018 VA S 1627. Enacted 2/21/2019.
2018 VA H 1922. Enacted 2/22/2019. Effective 7/1/2019.

These bills amend Va. Code Ann. § 8.01-126, Summons for unlawful detainer issued by magistrate or clerk or judge of a general district court.

The bills provide that "termination notice" means a notice given by the landlord to the tenant of a dwelling unit, or any notice of termination given by a landlord to a tenant of a nonresidential premises.

The bills provide that if the summons for unlawful detainer is filed to terminate a tenancy pursuant to the Virginia Residential Landlord and Tenant Act (Section 55-248.2 et seq.), the initial hearing on such summons shall occur as soon as practicable, but not more than 21 days from the date of filing. If the case cannot be heard within 21 days from the date of filing, the initial hearing shall be held as soon as practicable, but in no event later than 30 days after the date of the filing (adding, but in no event later than 30 days after the date of the filing).

The bill adds:

Notwithstanding any rule of court or provision of law to the contrary, no order of possession shall be entered unless the plaintiff or plaintiff's attorney or agent has presented a copy of a proper termination notice that the court admits into evidence.

Notwithstanding any rule of court or provision of law to the contrary, a plaintiff may amend the amount alleged to be due and owing in an unlawful detainer to request all amounts due and owing as of the date of the hearing. If additional amounts become due and owing prior to the final disposition of a pending unlawful detainer, the plaintiff may also amend the amount alleged to be due and owing to include such additional amounts. If the plaintiff requests to amend the amount alleged to be due and owing in an unlawful detainer, the judge shall grant such amendment. Upon amendment of the unlawful detainer, such plaintiff shall not subsequently file an additional summons for unlawful detainer against the defendant for such additional amounts if such additional amounts could have been included in such amendment. If another unlawful detainer is filed, the court shall dismiss the subsequent unlawful detainer. Nothing herein shall be construed to preclude a plaintiff from filing an unlawful detainer for a non-rent violation during the pendency of an unlawful detainer for nonpayment of rent.

LEGISLATION
Virginia
Writs of possession – Writs of eviction

2018 VA S 1448. Enacted 2/27/2019. Effective 7/1/2019.

This bill amends Va. Code Ann. § 8.01-470, Writs on judgments for specific property, to provide that, on a judgment for the recovery of specific property, a writ of possession for personal property or a writ of eviction for real property may issue for the specific property pursuant to an order of possession entered by a court of competent jurisdiction, which shall conform to the judgment as to the description of the property and the estate, title, and interest recovered, and there may also be issued a writ of fieri facias for the damages or profits and costs.

The bill adds that an order of possession shall remain valid for 180 days from the date granted by the court. If a plaintiff cancels a writ of eviction, such plaintiff may request other writs of eviction during such 180-day period.

The bill amends Va. Code Ann. § 8.01-471, Time period for issuing writs of eviction in unlawful entry and detainer; when returnable, to provide that writs of eviction (formerly, writs of possession), in case of unlawful entry and detainer, shall be issued within 180 days (formerly, 1 year) from the date of judgment for possession and shall be made returnable within 30 days from the date of issuing the writ.

The bill adds that, notwithstanding any other provision of law, a writ of eviction not executed within 30 days from the date of issuance shall be vacated as a matter of law without further order of the court that entered the order of possession, and no further action shall be taken by the clerk.

No writ shall issue, however, in cases under the Virginia Residential Landlord and Tenant Act if, following the entry of judgment for possession, the landlord has entered into a new written rental agreement with the tenant (formerly, the landlord has accepted rent payments without reservation), as described in Section 55-248.34:1. A writ of eviction (formerly, writ of possession) may be requested by the plaintiff or the plaintiff's attorney or agent.

LEGISLATION
Virginia
Nonresident property owners

2018 VA H 2410. Enacted 3/12/2019. Effective 7/1/2019.

This bill amends Va. Code Ann. § 55-218.1 to add that, as used in this section, "nonresident property owner" means any nonresident individual or group of individuals who owns and leases (i) residential real property consisting of four or more rental units or (ii) commercial real property within a county or city in the Commonwealth.

The bill provides that every property owner shall appoint and continuously maintain an agent who (i) if such agent is an individual, is a resident of the Commonwealth, or if such agent is a corporation, limited liability company, partnership or other entity, is authorized to transact business in the Commonwealth and (ii) maintains a business office within the Commonwealth. Every lease executed by or on behalf of nonresident property owners regarding any such real property shall specifically designate such agent and the agent's office address for the purpose of service of any process, notice, order or demand required or permitted by law to be served upon such property owner.

Formerly: Any nonresident person as the term "person" is defined in Section 55-248.4 of this title of the Commonwealth who owns and leases residential or commercial real property consisting of four or more units within a county or city in the Commonwealth shall have and continuously maintain an agent who is a resident and maintains a business office within the Commonwealth. Every lease executed by or on behalf of nonresident property owners regarding any such real property shall specifically designate such agent and the agent's office address for the purpose of service of any process, notice, order or demand required or permitted by law to be served upon such property owner.

LEGISLATION
Virginia
Eviction Diversion Pilot Program

2018 VA H 2655 and 2018 VA S 1450. Enacted 3/12/2019. Effective 7/1/2020.

These bills add Va. Code Ann. §§ 55-248.40:1, 55-248.40:2, and 55-248.40:3 relating to the Eviction Diversion Pilot Program.

The bills establish the Eviction Diversion Pilot Program (the Program) within the existing structure of the general district courts for the cities of Danville, Hampton, Petersburg, and Richmond. The purpose of the Program shall be to reduce the number of evictions of low-income persons. Notwithstanding any other provision of law, no

eviction diversion court or program shall be established except in conformance with this section.

The court shall direct an eligible tenant and his landlord to participate in the Program and to enter into a court-ordered payment plan. The court shall provide for a continuance of the case on the docket of the general district court in which the unlawful detainer action is filed to allow for full payment under the plan. The court-ordered payment plan shall be based on a payment agreement entered into by the landlord and tenant, on a form provided by the Executive Secretary.

Nothing in this section shall be construed to limit (i) the landlord from filing an unlawful detainer for a non-rent violation against the tenant while such tenant is participating in the Program or (ii) the landlord and tenant from entering into a voluntary payment agreement outside the provisions of this section.

DEFAULT SERVICING

CASE LAW

FDCPA – "Amount now due"

CASE NAME: *Mollberg v. Advanced Call Ctr. Techs., Inc.*
DATE: *01/22/2019*
CITATION: *United States District Court for the Eastern District of Wisconsin. LEXIS 9648*

ACCT mailed a dunning letter to Mollberg in an attempt to collect a debt owed to Synchrony Bank. The letter stated that the "TOTAL ACCOUNT BALANCE" was $1,113.00 and the "AMOUNT NOW DUE" was $234.00. ACCT used the term "AMOUNT NOW DUE" to mean the sum of the amount past due ($160.00) and the current monthly payment ($74.00), although its letter did not itemize those amounts.

Mollberg had previously received several letters from Synchrony Bank regarding the debt. Synchrony Bank advised Mollberg that October 17, 2017 was the last day for payment and the "AMOUNT NOW DUE" was $90.00. The term "AMOUNT NOW DUE" in that letter meant the amount past due, as evinced by another letter from Synchrony Bank advising Mollberg that her "Amount Past Due" was $90.00, her "Total Minimum Payment Due" was $160.00, and the payment due date was October 23, 2017. Later, Synchrony Bank sent a letter to Mollberg stating that the "Amount Past Due" was $160.00, that the "Total Minimum Payment Due" was $234.00, and that the "Payment Due Date" was November 23, 2017.

Mollberg sued ACCT, alleging violations of the FDCPA and the Wisconsin Consumer Act ("WCA"). Mollberg argued that the "amount of the debt" under § 1692g(a)(1) must be only the amount past due. She argued that "a debt collector must clearly state the amount that is past due on the date the letter is sent because the consumer is not expected nor required to pay portions of the balance that are "not yet due, let alone overdue."

The Court found no basis for using § 1692a(6)(F)(iii) to hold that a debt collector may only collect, or must clearly state, past-due amounts. According to the plain language of the FDCPA, "debt" refers to the amount owed without regard to whether it is currently due or past due. The "amount of the debt" is the amount the debt collector is authorized and attempting to collect in its letter. Mollberg failed to allege facts that ACCT did not clearly and accurately state the amount of the debt under § 1692g(a)(1).

Mollberg also contended that ACCT's use of the phrase "AMOUNT NOW DUE" would materially confuse or mislead the unsophisticated consumer in violation of 15 U.S.C. §§ 1692e(10) and 1692f. Mollberg asserted that a dunning letter that falsely implies to the consumer that the current installment is overdue is materially misleading and confusing to the consumer.

The Court failed to see how ACCT's letter implied that the current installment was overdue. It said that it was "NOW DUE," which was true. When ACCT sent its letter the monthly installment was in fact due, just not past due.

ACCT was not, as Mollberg claimed, attempting to collect a debt that was not yet due.

Synchrony Bank's last communication with Mollberg gave the "New Balance" as $1,113.00 and the "Total Minimum Payment Due" as $234.00; ACCT's letter gave the "Total Account Balance" as $1,113.00 and the "Amount Now Due" as $234.00. It was unlikely that a significant percentage of the population would fret over the slight difference in terminology when the amounts were identical and they clearly referred to (1) the total amount of the debt and (2) the amount the consumer was expected to pay for the time being.

Dismissed with prejudice.

CASE LAW

FDCPA – "Do not call"

CASE NAME: *Fox v. ProCollect, Inc.*
DATE: *01/30/2019*
CITATION: *United States District Court for the Eastern District of Arkansas, Western Division. LEXIS 14344*

Fox sued ProCollect, Inc., for violations of the FDCPA and the Arkansas Fair Debt Collection Practices Act. She also asserted claims under the Arkansas Deceptive Trade Practices Act, which the Court previously dismissed. ProCollect moved for summary judgment.

ProCollect sought to collect a debt from a debtor whose phone number ended in 9183. Instead, ProCollect called Fox, whose phone number was one digit off, ending in 9182. ProCollect called Fox's number five times from July 1, 2016 to May 10, 2017. No one at ProCollect ever spoke with Fox on any of those calls.

On May 11, 2017, Fox called and informed ProCollect it was calling a wrong number. One week later, on May 18, a ProCollect collector checked its internal system which showed the 9182 phone number as one associated with the debtor, Dale Gray. The collector then called Fox's number and left a voicemail for "Dale Gray." That same day Fox again called ProCollect asking to have her number removed from ProCollect's calling list. After this call, ProCollect placed a "DO NOT CALL" note next to the 9182 number in its internal system.

On June 8, despite the "DO NOT CALL" notation, a different collector called Fox's number without leaving a message. Fox then called ProCollect and requested, for the third time, that her number be removed from ProCollect's system. ProCollect did not contact Fox since that day.

The Court noted that a high volume of calls will rarely if ever make out a FDCPA violation on its own, and held that no reasonable jury could conclude that ProCollect's conduct gave rise to an intent to annoy, harass, or oppress.

The first and primary reason was that § 1692d prohibits as harassing conduct, among other things, the "use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person." It also holds up as examples of harassment using "obscene or profane language," publishing lists of debtors who refuse to pay their debts, advertising the sale of a debt in order to coerce payment, and placing calls without disclosing the caller's identity. ProCollect's actions were a far cry from the type of conduct Congress held up as harassment or abuse in § 1692d.

Second, another section of the FDCPA explicitly provides that a debt collector must cease further communication with a consumer, with a few exceptions, if the consumer "notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer," implying that merely calling a phone number after an oral request to stop does not, in and of itself, violate § 1692d(5).

Third, prohibiting two phone calls after a debt collector is notified a number is incorrect would, practically speaking, hinder legitimate collection efforts. Many alleged debtors

frequently claim debts are not theirs or allege wrong numbers to avoid collection.

The second FDCPA subsection at issue in this case was 15 U.S.C. § 1692f, which prohibits debt collectors from "us[ing] unfair or unconscionable means to collect or attempt to collect any debt." It lists eight examples of prohibited conduct.

The Court found that Fox's § 1692f claim failed because it rested on the same alleged misconduct that she asserted violated § 1692d(5). Even if the Court considered Fox's § 1692f claim independently, however, it failed on the merits. ProCollect's conduct did not amount to unfair or unconscionable conduct.

Summary judgment granted in favor of ProCollect on all of Fox's claims.

CASE LAW

TCPA – ATDS

CASE NAME: *Battaglia v. Quicken Loans, Inc.*
DATE: *02/04/2019*
CITATION: *United States District Court for the Western District of New York. LEXIS 17782*

In February 2018, Quicken Loans called and texted Battaglia on his cell phone multiple times each week and often multiple times each day. The caller often was trying to get in touch with a person named "Katie" regarding Quicken Loans. Battaglia did not know anyone named "Katie" and never authorized Quicken Loans to call his cell phone.

During one telephone conversation with a male agent of Quicken Loans, Battaglia told the agent that his company was "contacting the wrong person and [that Battaglia] was not interested in their services." Battaglia told Quicken Loans "to stop calling him on his cellular telephone." The agent "apologized for calling [Battaglia] and stated that [Quicken Loans] would remove [his] number from their system and that [he] would not receive any further calls." During the same month, Battaglia received a voicemail from Quicken Loans with an automated message. The message asked the listener to "press #1" if he "wanted to speak with a representative."

These telephone calls were "made using an automatic dialing system as defined by the [Telephone Consumer Protection Act] and/or transmitted prerecorded voice messages and/or transmitted messages using an artificial voice."

In March 2018, Battaglia received a text message from Quicken Loans. The text message said "Quicken Loans: Find the Mortgage that works for you right on your phones. Start online."

Battaglia filed suit against Quicken Loans, alleging violations of the TCPA. Quicken Loans moved to dismiss.

The Court found that Battaglia had stated a claim under the TCPA.

According to Quicken Loans, Battaglia's amended complaint did not provide details about the technology that Quicken Loans used to call Battaglia other than to "regurgitate" the statutory elements regarding the use of an ATDS technology or use of a prerecorded voice. But at least one court has found it unreasonable to hold plaintiffs accountable for detailing defendants' calling technology at the pleading stage: it would be virtually impossible, absent discovery, for any plaintiff to gather sufficient evidence regarding the type of machine used for a communication left on a plaintiff's voicemail.

But even among courts requiring more substantial factual allegations to successfully plead a TCPA claim, the use of an ATDS can be plausibly inferred from allegations regarding, for example, the robotic sound of the voice on the other line, the lack of human response when he attempted to have a conversation with the 'person' calling him, or the generic content of the message he received.

Battaglia's amended complaint included sufficient factual content to allow the Court to draw a reasonable inference

that Quicken Loans was liable for violating the TCPA, and he stated a facially plausible claim.

Quicken Loans's motion to dismiss denied.

CASE LAW

Bankruptcy – Attorneys' fees

CASE NAME: *Summitbridge Nat'l Invs. III, LLC v. Faison*
DATE: *02/08/2019*
CITATION: *915 F.3d 288, United States Court of Appeals for the Fourth Circuit*

Faison signed three promissory notes secured by deeds of trust for farmland that Faison owned. Faison agreed that if the notes were placed with an attorney for collection, he would pay "all costs of collection, including but not limited to reasonable attorneys' fees."

Faison filed a Chapter 11. BB&T filed three proofs of secured claims.

BB&T assigned its interests to SummitBridge. SummitBridge defended the three claims in Faison's bankruptcy proceedings, incurring attorneys' fees in the process.

Faison's proposed a plan, ultimately approved by the bankruptcy court, treated SummitBridge's three claims as one aggregate secured claim for the value of the farmland securing the notes; enough to cover the outstanding principal and pre-petition interest on the three notes, as well as a portion of SummitBridge's post-petition interest and attorneys' fees. To the extent that SummitBridge had incurred attorneys' fees not covered by the farmland's value, the plan made clear, SummitBridge could file an unsecured claim to recover those fees.

SummitBridge filed an unsecured claim for the remainder of the post-petition attorneys' fees. Faison objected.

The bankruptcy court found that the Code does not allow creditors to assert unsecured claims for post-petition attorneys' fees. The district court, affirmed. SummitBridge again appealed.

The Court found that it is presumed that claims enforceable under applicable state law will be allowed in bankruptcy unless they are expressly disallowed, and nothing in the Code disallows claims for post-petition attorneys' fees that are incurred in connection with federal bankruptcy law issues.

The Court rejected Faison's position that because no attorneys' fees were incurred until after bankruptcy proceedings began, SummitBridge could not have had a valid claim for those fees on the date of the filing of the petition. But the Code defines "claim" broadly, and expressly includes "right[s] to payment" that are "contingent."

The Court also rejected Faison's argument that, because § 506(b) expressly allows creditors with over-secured claims to add attorneys' fees to their claims, it implies that creditors who are unsecured or, as here, under-secured, may not assert such claims. As stated, claims enforceable under state law are presumed allowable, and this presumption may be overcome only by an express disallowance. Further, § 506 deals with the narrow question of whether certain types of claims should be considered secured or unsecured.

Finally, while it was true, as Faison argued, that if otherwise secured creditors recover on unsecured claims for post-petition attorneys' fees, those payments may come at the expense of unsecured creditors' ability to recover fully on their claims to principal, a basic tenet of bankruptcy law is that secured creditors are privileged over unsecured creditors.

Reversed.

CASE LAW

FCRA – Preemption

CASE NAME: *Strianese v. Diversified Consultants, Inc.*
DATE: *02/08/2019*
CITATION: *United States District Court for the Western District of North Carolina, Charlotte Division. LEXIS 20837*

Plaintiff's suit alleged state-law claims of violations of the North Carolina Unfair and Deceptive Trade Practices Act, and civil conspiracy. Plaintiff also alleged an FDCPA claim against Defendant Diversified Consultants, Inc.

Plaintiff contended that FCRA preemption did not bar his North Carolina UDTPA and civil conspiracy claims because the Amended Complaint alleged Defendants engaged in unfair and deceptive conduct subsequent to Defendants' failure to accurately report or correct information on Plaintiff's credit report—conduct regulated by the FCRA.

The Court found that Congress intended the FCRA to serve as a comprehensive series of restrictions on the disclosure and use of credit information assembled by consumer reporting agencies. Because it was designed to serve as a comprehensive legislative framework, Congress added a strong preemption provision, 15 U.S.C. § 1681t(b).

Accordingly, FCRA preempts state-law claims that arise from an alleged failure to accurately report or correct information on a consumer's credit report.

Here, the conduct Plaintiff complains of sprang from the alleged failure of Defendants, who qualify as "furnishers" of credit information under the FCRA, to accurately report, investigate, and report information on Plaintiff's credit report. Although Plaintiff argued that Defendants' unfair and deceptive conduct occurred after the filing of the credit report when Defendants "attempted to coerce Plaintiff into filing an unwarranted police report[,] . . . turning over personal information to Sprint . . . and paying unwarranted money to Sprint," the communications and information Defendants sought to compel from Plaintiff was in relation to—and a reaction of—the furnishing of inaccurate information on Plaintiff's credit report. Defendants requested this information to investigate Plaintiff's claim of inaccurate reporting.

Stripped to their core, Plaintiff's state-law claims allege that Defendants (1) improperly "filed delinquencies on his credit report and wrongfully and unreasonably refused to remove them" and (2) improperly handled the investigation of Plaintiff's claim that false information was furnished to credit reporting agencies. The FCRA expressly governs both allegations.

Plaintiff's North Carolina UDTPA and civil conspiracy claims were dismissed. But, Plaintiff's FDCPA claim against Defendant Diversified Consultants, Inc. may proceed.

CASE LAW

FDCPA – "Debt collector"

CASE NAME: *Barbato v. Greystone Alliance, LLC*
DATE: *02/22/2019*
CITATION: *United States Court of Appeals for the Third Circuit. LEXIS 5336*

Crown Asset Management was a purchaser of charged-off receivables. Crown did not collect on the accounts itself; rather, it referred the charged-off receivables to a third-party servicer for collection or it hired a debt collection law firm to file a collection lawsuit on its behalf. Crown principally derived revenue from liquidating the consumer debt it acquired.

Crown purchased Barbato's charged-off debt and referred it to Turning Point for collection.

Crown did not have any direct communication with Barbato, nor did it review or approve the letter sent to her by Turning Point.

Turning Point was absorbed by Greystone Alliance, LLC. Barbato filed a complaint against Greystone, alleging that it had violated the FDCPA, later adding Turning Point and Crown as defendants and alleging that each was a "debt

collector" as defined by the FDCPA. Barbato eventually dismissed both Turning Point and Greystone from the action.

The District Court held that Crown was "acting as [a] 'debt collector'" because: (1) it acquired debts like Barbato's when they were in default and (2) Crown's "principal purpose" was the "collection of 'any debts.'" The District Court nevertheless denied Barbato's motion for summary judgment, holding that she had not established that Crown was vicariously liable for Turning Point's conduct. Crown appealed, contending that it did not qualify as a "debt collector" under the "principal purpose" definition.

The Court found that an entity qualifies as a debt collector if the "principal purpose" of its "business" is the "collection of any debts." While it is true that "collection" can be defined as "the act or process of collecting," it can also be defined as "that which is collected." So defined, the focus shifts from the act of collecting to what is collected, namely, the acquired debts. As long as a business's raison d'être is obtaining payment on the debts that it acquires, it is a debt collector. Who actually obtains the payment or how they do so is of no moment.

The record reflected that Crown's only business was the purchasing of debts for the purpose of collecting on those debts, and, without the collection of those debts, Crown would cease to exist. In short, Crown fell squarely within § 1692a(6)'s "principal purpose" definition.

By way of guidance on remand, the Court offered two observations. First, the principal-agent relationship requires that the principal either control or have the right to direct or control the agent. Vicarious liability need not be based on a showing of actual control over the specific activity alleged to violate the FDCPA.

Second, the District Court assumed that Crown could not be held vicariously liable for the acts of an agent under the FDCPA unless the agent qualified as a "debt collector" in its own right. The Court found the case law imposes no such requirement; to the contrary, "an entity which itself meets the definition of 'debt collector' may be held vicariously liable for unlawful collection activities carried out by another on its behalf." An entity that is itself a 'debt collector'—and hence subject to the FDCPA—should bear the burden of monitoring the activities of those it enlists to collect debts on its behalf.

Affirmed and remanded.

LEGISLATION

District of Columbia

Government shutdown - Foreclosure

2019 DC B 80. Enacted 2/6/2019. Effective immediately.

This bill is intended to protect, on an emergency basis, unpaid federal workers, employees of contractors of the federal government, and household members of federal workers and employees of contractors from eviction, late fees, and foreclosure during a federal government shutdown.

The bill provides that upon the request of a borrower who is a federal worker, an employee of a contractor, or a household member eligible for relief, the Mediation Administrator shall stay the mediation and shall not issue a mediation certificate to a lender until the covered period elapses. The borrower shall provide the documentation required to establish the borrower's eligibility.

If, during the covered period but before the effective date of this act, the Mediation Administrator issued a mediation certificate and the lender gave written notice of the intention to foreclose on a residential mortgage, a federal worker, employee of a contractor, or household member eligible for relief may petition the Superior Court to stay the sale until the covered period has elapsed.

If a lender initiates a foreclosure proceeding in Superior Court against a federal worker, an employee of a contractor, or a household member during the covered period, the federal worker, employee of a contractor, or

household member eligible for relief may move the court to stay the proceeding until the covered period elapses.

FAQ
Ohio
HB 489 – Servicing

House Bill 489 Servicing Changes FAQ.

House Bill 489 was recently passed by the Ohio Legislature. H.B. 489 amends the Ohio Residential Mortgage Lending Act (RMLA) to require companies that engage in mortgage servicing to obtain a Certificate of Registration.

Includes:

Q: When does the new requirement for companies that service residential mortgage loans to obtain a Certificate of Registration under the RMLA go into effect?

A: The effective date is not yet available from the Ohio Secretary of State's website. The division will not take action against companies that submit applications before the end March 2019 for unlicensed activity even if the division is not able to complete the registration process before the law becomes effective. If your company will need a Certificate of Registration under the new law, please apply via NMLS before the end of March 2019.

Q: My company services loans and we already hold a Certificate of Registration under the RMLA, do we need to obtain a new license or registration?

No.

Q: My company owns mortgage servicing rights but contracts with a servicer to collect on the loans, so we don't interact with borrowers. Do we need to obtain a Certificate of Registration under the new requirement?

A: Yes.

Q: My company only engages in mortgage servicing and not mortgage origination or mortgage brokering, will we be required to license Mortgage Loan Originators (MLO) and/or have an Operations Manager (also called a Qualifying Individual) to obtain an RMLA Certificate of Registration?

A: A company that only engages in servicing of residential mortgage loans under the RMLA will still be required to name an Operations Manager. That Operations Manager, unlike the Operations Manager for a company that engages in mortgage lending or mortgage brokering, does not need to be a licensed MLO and does not need to have three years of experience as an MLO prior to being designated as the Operations Manager.

INSTALLATION

LEGISLATION
Arkansas
Building design – Local regulation

2019 AR S 170. Enacted 3/13/2019. Effective 8/9/2019 (projected).

This bill adds Ark. Code Ann. §§ 14-17-212 and 14-56-204 to provide that a county or municipality shall not regulate residential building design elements.

The bill provides that the sections do not apply to:

(6) A regulation applied to manufactured housing in a manner consistent with applicable law.

ADOPTED RULE
Illinois
Drainage – Immobilization

Effective 2/6/2019, this rule amends Ill. Admin Code tit. 77, §§ 860.10, .20, .110, .120, .130, .140, .150, .160, .200, .210, .220, .230, .240, .250, .260, .270, .280, .290, .300, .310, .320, .330, .340, .350-.540 non seq. and Appendix D, related to water supplies, sewage disposal systems, electrical systems and refuse disposal. A new Section related to enforcements is also added.

The rule amends Ill. Admin Code tit. 77, § 860.150, Immobilization, to provide that, in order for a home to be considered immobilized, the following conditions must be met:

b) The wheels, tongue, and hitch shall be removed and the home shall be supported by a continuous perimeter foundation of material such as concrete, mortared concrete block, or mortared brick which extends below the established frost depth. The home shall be secured in accordance with the Manufactured Home Quality Assurance Act and Manufactured Home Installation Code. (Type A Violation) to the continuous perimeter foundation with 1/2 inch foundation bolts spaced every 6 feet and within one foot of the corners. The bolts shall be imbedded at least 7 inches into concrete foundations or 15 inches into block foundations.

Formerly, the second sentence above provided: The home shall be to the continuous perimeter foundation with 1/2 inch foundation bolts spaced every 6 feet and within one foot of the corners. The bolts shall be imbedded at least 7 inches into concrete foundations or 15 inches into block foundations.

The rule amends Ill. Admin Code tit. 77, § 860.200, Layout of the Manufactured Home Community, to add that sites shall be graded to prevent surface water or drainage from accumulating or going under the home.

The rule amends Ill. Admin Code tit. 77, § 860.400, Required Documents, to provide:

b) The manufactured home community owner or manager shall provide, either in print or via electronic means (adding, either in print or via electronic means), a resident of each site with a copy of the Department's publication "Living in a Manufactured Home Community", which contains information regarding the requirements for installation (formerly, tiedown) of homes, safety tips in the event of a tornado, and a copy of the Mobile Home Landlord and Tenants Rights Act. (Type A Violation);

The rule adds Ill. Admin Code tit. 77, § 860.540, Administrative Monetary Penalties.

The rule repeals Ill. Admin. Code tit. 77 § 860, APPENDIX D Home Rule Units.

LENDING

BULLETIN

HUD

FHA inspectors

Issued 3/12/2019.

Mortgagee Letter 2019-04.

Removal of the Federal Housing Administration (FHA) Inspector Roster.

This final rule became effective August 2, 2018.

HUD has eliminated the requirements for the FHA Inspector Roster. For local jurisdictions that do not provide building code enforcement and requisite documentation, the rule allows inspections performed by the International Code Council (ICC) RCI or CI, who is licensed or certified as a home inspector in accordance with the applicable state and local requirements governing the licensing or certification of inspectors in the respective jurisdiction. For jurisdictions that have an absence of RCIs or CIs, the rule requires lenders to obtain an inspection performed by a third party who is a registered architect, a professional engineer, or a trades person or contractor with a minimum of 5 years' experience and has met the licensing and bonding requirements of the state in which the property is located, as specified.

Requirements to use an FHA Roster Inspector will be removed or amended in the following subsections of the HUD Single Family Housing Policy Handbook 4000.1.

BULLETIN
HUD
Protection plan requirements

Issued 3/12/2019.

Mortgagee Letter 2019-05.

Removal of the FHA Ten-Year Protection Plan Requirements.

This Mortgagee Letter eliminates the 10-year protection plan requirements, allowing borrowers to qualify for FHA mortgage insurance on high loan-to-value mortgages where the dwelling was not approved for guaranty, insurance, or a direct loan before the beginning of construction and where the dwelling is less than one year old.

These changes are effective for all case numbers assigned on or after March 14, 2019.

LICENSING

LEGISLATION
Arkansas
Retailers – MLOs

2019 AR S 188. Enacted 2/26/2019. Effective 8/9/2019 (projected).

This bill amends certain provisions of the Fair Mortgage Lending Act to, among other things, create an exemption for retailers and retailer employees.

The bill amends Ark. Code Ann. § 23-39-502 (9)(B)(xvi), concerning the definition of "exempt person" under the Fair Mortgage Lending Act, is amended to read as follows:

(xvi) A manufactured or modular home retailer and its employees if:

(a) The manufactured or modular home retailer or its employees perform only administrative or clerical tasks on behalf of a person required to be licensed under this subchapter; or

(b) The manufactured or modular home retailer and its employees:

(1) Do not receive compensation or financial gain for engaging in loan officer activities that exceeds the amount of compensation or financial gain that could be received in a comparable cash transaction for a manufactured home;

(2) Disclose to the consumer in writing any corporate affiliation with a mortgage banker;

(3) Provide referral information for at least one (1) unaffiliated creditor if the manufactured or modular home retailer has a corporate affiliation with a mortgage banker and the mortgage banker offers a recommendation; and

(4)(A) Do not directly negotiate loan terms with the consumer or lender.

(B) As used in subdivision (9)(B)(xvi)(b)(4)(A) of this section, "loan terms" includes rates, fees, and other costs.

Formerly, this section provided: (xvi) A manufactured home retailer and its employees if performing only administrative or clerical tasks in connection with the sale or lease of a manufactured home and the manufactured home retailer and its employees receive no compensation or other gain from a mortgage banker or a mortgage broker for the performance of the administrative or clerical tasks.

SALES

BULLETIN
Texas
Deposits

Issued 3/19/2019.

Texas Department of Housing and Community Affairs, Manufactured Housing Division.

Recently, there has been a trend of instances where the retailer is not providing the required written disclosure to the consumer documenting the deposit, providing the name and address of the company accepting the deposit and advising them how to request a refund. This is a violation that will result in enforcement action.

Effective April 1, 2019, the MHD will begin placing an emphasis on deposit issues in our compliance reviews. In the interim, Retailers should verify that their files include the required disclosure for deposits taken and ensure that eligible deposits are refunded within the required time to avoid any enforcement action.

TAXES

LEGISLATION

Colorado

Sales and use tax - Exemptions

2019 CO H 1011. Enacted 2/28/2019. Effective 9/1/2019.

The purpose of this legislation is to effect a nonsubstantive change in statute to clarify the scope of an existing state sales and use tax exemption for manufactured homes.

The bill amends Colo. Rev. Stat. § 39-26-721 to provide that: (1) Forty-eight percent of the purchase price of A MANUFACTURED HOME, AS DEFINED IN SECTION 42-1-102 (106)(b), IS exempt from taxation under part 1 of this article 26 ; except that the entire purchase price in any subsequent sale of SUCH a manufactured home, after IT has been once subject to the payment of sales tax by virtue of section 39-26-113, IS exempt from taxation under part 1 of this article 26;

(2) The storage, use, or consumption of a manufactured home, as defined in section 42-1-102 (106)(b), after THE manufactured home has been once subject to the payment of use tax by virtue of section 39-26-208, IS exempt from taxation under part 2 of this article 26 .

Formerly: (1) Forty-eight percent of the purchase price of factory-built housing, as such housing is defined in section 24-32-3302 (10), C.R.S., shall exempt from taxation under part 1 of this article; except that the entire purchase price in any subsequent sale of a manufactured home, as such vehicle is defined in section 42-1-102 (106)(b), C.R.S., after such manufactured home has been once subject to the payment of sales tax by virtue of section 39-26-113, shall be exempt from taxation under part 1 of this article;

(2) The storage, use, or consumption of a manufactured home, as such vehicle is defined in section 42-1-102 (106)(b), C.R.S., after such manufactured home has been once subject to the payment of use tax by virtue of section 39-26-208, shall be exempt from taxation under the provisions of part 2 of this article.

LEGISLATION

Idaho

Occupancy tax

2019 ID H 62. Enacted 2/20/2019. Effective retroactively to January 1, 2019.

This bill makes property tax relief applicable to either the property tax or the occupancy tax.

The bill amends Idaho Code § 63-317, OCCUPANCY TAX – PROCEDURES, to add that upon completion of the appraisal and entry of the appraised value on the occupancy tax roll, which roll shall be prepared for property subject to the occupancy tax, the county assessor shall:

(ii) Notify the owner of the right to apply for a reduction of property taxes or occupancy taxes pursuant to chapter 7, title 63, Idaho Code. If the owner applies for and meets the requirements for a tax reduction within thirty (30) days of the notification by the county assessor, the tax reduction roll shall be amended by the county assessor by

adding claims submitted pursuant to this section, provided such claims are submitted to the assessor no later than September 1. For claims submitted after that date, the county assessor shall prepare a supplemental tax reduction roll. The supplemental tax reduction roll shall be submitted to the state tax commission along with the claims no later than the first Monday in March of the following tax year. The county assessor and the state tax commission shall calculate a reduction of occupancy taxes and reimbursement to taxing districts in the same manner as if a claim had been submitted on or before April 15 of the tax year.

The bill amends Idaho Code § 63-702, REDUCTION IN PROPERTY TAXES OR OCCUPANCY TAXES -- CLAIM IS PERSONAL – EXCEPTIONS, to add that:

(b) An occupancy tax reduction shall be allowed pursuant to the provisions of sections 63-701 through 63-710, Idaho Code, if the owner occupies the newly constructed residential improvements at any time during the year and has not filed for a property tax reduction or occupancy tax reduction under this section on any other homestead for the same year.

The bill amends Idaho Code § 63-706, TIME REQUIREMENTS FOR FILING CLAIM, to add:

(2) Any claim for occupancy tax reduction to be granted under the provisions of sections 63-701 through 63-710, Idaho Code, shall be governed by the provisions of section 63-317, Idaho Code, but must be filed in the office of the county assessor no later than the fourth Monday in January of the year following the year for which the occupancy tax was levied.

TITLING AND PERFECTION

ADOPTED RULE

Iowa

Cancellation of security interests

Effective 4/17/2019, this rule amends Iowa Admin. Code r. IAC 761-400.8 to incorporate the requirements of Iowa Code section 321.50 as enacted by 2018 Iowa Acts, Senate File 2325, section 1, allowing for the cancellation of a security interest to be submitted either on the title itself or on a separate notarized statement from the lienholder. This provision is a favorable alternative to the previous process, which only allowed the security interest cancellation to be noted on the title and did not accommodate the common practice of banks or lienholders sending along with the unsigned title a notarized letter canceling the security interest.

LEGISLATION

Wyoming

Certificate of title - Application

2019 WY H 15. Enacted 3/8/2019. Effective 1/1/2020.

This bill amends Wyo. Stat. Ann. § 31-2-103, Contents of application; signature; vehicle identification number; issuance of certificate, to delete the requirement that applications for paper certificates of title or electronic certificates of title, if available, be under oath.

The bill provides that the application must contain or be accompanied by the manner in which the ownership interest in the vehicle is to be held.

The bill requires a vehicle bill of sale that substantially conforms with the form provided in W.S. 31-2-104(h)(ii), and any other documentation necessary to verify proof of ownership including an affidavit for proof of ownership or any surety bond required by this act.

The bill amends Wyo. Stat. Ann. § 31-2-104 to provide a form of the bill of sale for the transfer of ownership if the transferor is an auctioneer of vehicles and transfers the vehicle in the course of his business as an auctioneer of vehicles or through an auctioneer of vehicles. The transferor or auctioneer shall then deliver the certificate of title to the transferee within thirty (30) days of the date of sale and shall deliver to the transferee at the time the

vehicle is delivered a signed (deletes, notarized) bill of sale,

The bill amends Wyo. Stat. Ann. § 31-2-503, Applications; contents; effect, re: mobile homes, to delete the requirement that applications for certificates of title be under oath.

The bill provides that the application must include the manner in which the ownership interest in the mobile home is to be held.

LEGISLATION
Wyoming
Certificate of title - Transportation

2019 WY H 55. Enacted 3/8/2019. Effective immediately.

This bill amends Wyo. Stat. Ann. § -2-508, Payment of taxes, receipt and over–width permit for transportable homes, to provide that, before any transportable home or portion thereof, whose original movement commences within the state of Wyoming is conveyed upon any street or highway, the owner shall present a proof of ownership for each portion of a prebuilt or modular home, or a certificate of title or copy of the certificate of title if (adding, or a copy of the certificate of title if) for a mobile home, to the county treasurer of the county in which the transportable home is located, and pay the current year's taxes as computed by the county treasurer.

The bill provides that, if a copy of the certificate of title is presented, the county treasurer shall verify that the copy is a true and accurate copy of the current title issued for the mobile home.

Upon full payment of the current year's taxes due, the county treasurer shall issue a receipt describing the transportable home, indicating that a copy of the certificate of title was verified if applicable (adding, indicating that a copy of the certificate of title was verified if applicable) and indicating the current year's taxes are paid.

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