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 March 2019 Manufactured Housing Law Update. We hope you are enjoying Spring.

Items of interest this month include the US Supreme Court holding that a firm pursuing a non-judicial foreclosure is not a debt collector under the FDCPA.

In addition, Montana amended its mortgage licensing law, which will make it more onerous for lenders and servicers to obtain and maintain licenses. In addition, the changes to the law give authority to the regulator to examine service providers of licensees.

There are also a few bankruptcy decisions that industry may find interesting.

These items and more, so read on.

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COMMUNITIES

ADOPTED RULE
Arizona
Sanitation – Park trailers

Effective 3/6/2019, this rule adopts, amends or repeals Ariz. Admin. Code §§ R9-8-501, -502, -503, -504, -505, -506, -507, -512, -521, -522, -523, -531, -533, -541, -542, -543, -544, -551 related to health and sanitation for various specific aspects of trailer coach parks, including food preparation in community kitchens, sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply.

The rule amends Article 5. Recreational Vehicles And Parks, Formerly, Trailer Coach Parks.

A violation of this Article is a public health nuisance and may be subject to abatement pursuant to A.R.S. § 36-602.

Inspections of recreational vehicle parks shall be conducted in accordance with A.R.S. § 36-136(I)(8) by the regulatory authority.

A responsible party shall ensure that a recreational vehicle park provides a bathroom or toilet alternative if it accommodates a recreational vehicle that does not have a toilet.

The rule includes provisions for Common Area Management, Water Supply, Sewage Management and Refuse Management.

Note: "Recreational vehicle" includes (c) A park trailer or park model built on a single chassis, mounted on wheels or originally mounted on wheels and from which the wheels have been removed and designed to be connected to utilities necessary for operation of installed fixtures and appliances and has a gross trailer area of not less than three hundred twenty square feet and not more than four hundred square feet when it is set up, except that it does not include fifth wheel trailers.

ADOPTED RULE
California
Chemical exposure

Effective 7/1/2019, this rule adopts Cal. Code Regs. tit. 27, §§ 25607.34, .35 to provide guidance to residential rental property businesses concerning how to comply with the warning requirements under Proposition 65 for exposures to listed chemicals at residential rental property.

Cal. Code Regs. tit. 27, § 25607.34, Residential Rental Property Exposure Warnings – Methods of Transmission, provides that:

A warning for exposures to listed chemicals at a residential rental property meets the requirements of this subarticle if it complies with the content requirements in Section 25607.35, and

(1) Is provided to each known adult occupant at the time of renting, leasing, letting, or hiring out the property, and

(2) Is provided annually directly to the known adult occupants of the property in hard copy or electronic form or in each lease or rental agreement, renewal or amendment for the property.

(c) If the lease, rental agreement, renewal, or amendment for the property or any other disclosures or required notices from the landlord to the tenant are provided to the occupants in any language other than English, the warning must be provided in that or those languages.

(d) In addition to the warning specified in this section, residential rental properties must also provide warnings for enclosed parking facilities pursuant to Sections 25607.20, and 25607.21, and designated smoking areas pursuant to Sections 25607.28 and 25607.29, where exposures to listed chemicals from any enclosed parking facilities and designated smoking areas can occur on the property.

Cal. Code Regs. tit. 27, § 25607.35, Residential Rental Property Exposure Warnings – Content, provides that a

warning for exposures to listed chemicals at a residential rental property meets the requirements of this subarticle if it is provided using the methods required in Section 25607.34 and includes all the elements specified in this section.

PROPOSED LEGISLATION

Colorado

Park regulation

2019 CO H 1309. Introduced 4/3/2019.

This bill concerns the regulation of mobile home parks; grants counties the power to enact ordinances for mobile home parks, extending the time to move or sell a mobile home after eviction proceedings, and creating the mobile home park dispute resolution and enforcement program.

According to the authors –

The bill provides protections for mobile home owners by:

Granting counties the power to enact certain ordinances for mobile home parks;

Extending the time period between the notice of nonpayment of rent and the termination of any tenancy or other estate at will or lease in a mobile home park; and

Extending the time a mobile home owner has to vacate a mobile home park after a court enters an eviction order.

The bill also creates the "Mobile Home Park Dispute Resolution and Enforcement Program" (program). The program authorizes the division of housing of the department of local affairs to:

Register mobile home parks;

Collect a registration fee from mobile home parks;

Collect and annually report upon data related to disputes and violations of the "Mobile Home Park Act" (act);

Produce and distribute educational materials concerning the act and the program;

Create and maintain a database of mobile home parks;

Create and maintain a database to manage the program; and

Take complaints, conduct investigations, make determinations, impose penalties, and participate in administrative dispute resolutions when there are alleged violations of the act.

LEGISLATION

Idaho

Service dogs

2019 ID S 1075. Enacted 3/25/2019. Effective 7/1/2019.

This bill clarifies rights of individuals with service dogs and dogs in training.

The bill defines "Service dog" as a dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for purposes of this chapter. The work or tasks performed by the service dog must be directly related to the individual's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing nonviolent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this chapter.

The bill adds Idaho Code § 56-704A, Rights Of Individuals With Service Dogs, to provide that a place of public accommodation shall modify its policies, practices, or procedures to permit the use of a service dog by an individual with a disability or an authorized handler.

A place of public accommodation may ask an individual with a disability to remove a service dog from the premises if:

(a) The service dog is out of control and the service dog's handler does not take effective action to control it; or

(b) The service dog is not housebroken.

A service dog shall be under the control of its handler. A service dog shall have a harness, leash, or other tether, unless the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service dog's safe, effective performance of work or a task, in which case the service dog must otherwise be under the handler's control through voice control or other effective means.

A place of public accommodation shall not ask about the nature or extent of a person's disability but may ask: if the service dog is required because of a disability; and what work or task the service dog has been trained to perform. A place of public accommodation shall not require documentation, such as proof that the service dog has been certified, trained, or licensed as a service dog. A place of public accommodation may not make inquiries about a service dog when it is readily apparent that the service dog is trained to do work or perform tasks for an individual with a disability, such as: the dog is observed guiding an individual who is blind or has low vision, pulling an individual's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability.

Individuals with disabilities shall be permitted to be accompanied by their service dog in all areas of a place of public accommodation including, but not limited to, a common carrier, hotel, lodging house, or place where members of the public, participants in services, programs or activities, or invitees, as relevant, are allowed to go.

A place of public accommodation, including, but not limited to, a common carrier, hotel, lodging house, or other public place, shall not ask or require an individual with a disability to pay a surcharge, even if people accompanied by pets are required to pay fees or to comply with other requirements generally not applicable to people without pets. If a place of public accommodation normally charges individuals for the damage they cause, an individual with a disability may be charged for damage caused by the individual's service dog.

The bill amends Idaho Code § 56-704A to provide that every individual who is not an individual with a disability but who is specifically training or socializing a dog for the purpose of being a service dog shall have the privilege to be accompanied by the dog in any of the places described in section 56-703, Idaho Code, without being required to pay an extra charge for the dog if the accompaniment is part of the dog's training or socialization to become a service dog. The individual accompanying the dog-in-training shall carry and upon request display an identification card issued by a recognized school for service dogs or training dogs or an organization that serves individuals with disabilities. The dog-in-training shall be visually identified as a dog-in-training as provided in section 56-701A, Idaho Code. The school or organization as identified on the identification card shall be fully liable for any damages done to the premises or facilities by the dog, and no liability to other persons shall be attached to the owner, lessor, or manager of the property, arising out of activities permitted by this chapter.

LEGISLATION

Kentucky

Assistance animals

2019 KY H 411. Enacted 3/26/2019. Effective 6/26/2019.

This bill amends Ky. Rev. Stat. Ann. § 383.085, relating to reasonable accommodations for assistance animals in housing.

The bill provides that "Therapeutic relationship" means the provision of care, in good faith, to the person with a disability by:

1. A licensed clinical social worker who holds a valid, unrestricted state license under KRS 335.100 and who maintains an active practice within the state;

2. A professional counselor who holds a valid, unrestricted state license under KRS 335.525 and who maintains an active practice within the state;

3. An advanced practice registered nurse who holds a valid, unrestricted state license under KRS 314.042 and who maintains an active practice within the state;

4. A psychologist who holds a valid, unrestricted state license under KRS 319.050 or 319.053 and who maintains an active practice within the state; or

5. A physician who holds a valid, unrestricted state license under KRS 311.571 and who maintains an active practice within the state.

The bill provides that an individual who moves from another state may provide documentation from a health services provider who is licensed in that state, so long as the person with a disability has an ongoing therapeutic relationship with the provider. This definition shall not include a health care provider described in this paragraph whose primary service is to provide documentation to a person requesting a reasonable accommodation in exchange for a fee.

The bill provides that a person commits the offense of misrepresentation of an assistance animal if the person knowingly:

(e) Engages in fraud, deceit, or dishonesty in providing documentation to a person as a part of a request for the use of an assistance animal in housing; or

(f) Provides documentation as a part of a request for an assistance animal in housing to a person for the primary purpose of obtaining a fee.

LEGISLATION
Michigan
Judgment for possession – Abandoned property

2019 MI S 3. Enacted 4/3/2019. Effective 7/2/2019.

This bill amends Mich. Comp. Laws § 5744 to provide:

(1) Subject to the time restrictions of this section, the court entering a judgment for possession in a summary proceeding shall issue a writ commanding a court officer appointed by or a bailiff of the issuing court, the sheriff or a deputy sheriff of the county in which the issuing court is located, or an officer of the law enforcement agency of the local unit of government in which the issuing court is located to restore the plaintiff to and put the plaintiff in full, peaceful possession of the premises by removing all occupants and all personal property from the premises and doing either of the following:

(a) Leaving the property in an area open to the public or in the public right-of-way.

(b) Delivering the property to the sheriff as authorized by the sheriff.

(2) Abandonment of the premises that is the subject of a writ under subsection (1) and of any personal property on the premises must be determined by the officer, bailiff, sheriff, or deputy sheriff serving the writ.

LEGISLATION
Mississippi
Eviction

2019 MS S 2716. Enacted 3/22/2019. Effective immediately.

This bill clarifies when a complaint for eviction is triable and clarifies when a warrant for eviction is to be issued.

The bill amends Miss. Code Ann. § 89-7-35 to provide:

(1) If, at the time appointed, it appears that the summons has been duly served, and if* * * a judgment of eviction is granted (adding, a judgment of eviction is granted), the magistrate shall issue* * * a warrant to the sheriff or any constable of the county, or to a marshal of the municipality in which the premises, or some part thereof, are situated, immediately upon request, except when prohibited or otherwise provided under Section 89-7-45 (adding, immediately upon request, except when prohibited or otherwise provided under Section 89-7-45), commanding him to remove all persons from the premises, and to put the applicant into full possession thereof.

The bill amends Miss. Code Ann. § 89-7-41 to provide:

(1) If the decision is in favor of the landlord or other person claiming the possession of the premises, the magistrate shall issue* * * a warrant to the sheriff, constable, or other officer immediately upon request, except when prohibited or otherwise provided under Section 89-7-45 (adding, officer immediately upon request, except when prohibited or otherwise provided under Section 89-7-45), commanding him immediately to put the landlord or other person into possession of the premises, and to levy the costs of the proceedings of the goods and chattels, lands and tenements, of the tenant or person in possession of the premises who shall have controverted the right of the landlord or other person.

Miss. Code Ann. § 89-7-45 has been amended to provide:

When warrant for removal may issue in cases of nonpayment of rent. If* * * a judgment of eviction is founded solely upon the nonpayment of rent* * * and, at the time of the request for the warrant for removal the full and complete amount of rent due, including any late fees as provided in the rental agreement that have accrued* * * as of the date of judgment, and the costs of the proceedings, have been paid to the person entitled to the rent,* * * the magistrate shall not issue a warrant for removal. If the rent, late fees and costs* * * have not been paid* * * in full at the time of the request for the warrant for removal, the magistrate must immediately issue the warrant* * * for removal unless the judge determines that, for good cause shown, a stay not to exceed three (3) days would best serve the interests of justice and equity. If it is shown that a stay is likely to result in material injury to the property of the person entitled to the rent, no stay shall be granted.

LEGISLATION

Mississippi

Premises liability actions

2019 MS S 2901. Enacted 3/29/2019. Effective 7/1/2019.

This bill enacts the, as yet uncodified, "Landowners Protection Act" to provide that, for any premises-liability actions brought under the laws of the State of Mississippi, no person who owns, leases, operates, maintains, or manages commercial or other real property in the State of Mississippi and no director, officer, employee, agent or independent contractor acting on behalf of any such person shall be civilly liable to any invitee who is injured on said property as the result of the willful, wanton or intentional tortious conduct of any third party who is not a director, officer, employee or agent of the person who owns, leases, operates, maintains or manages such commercial or other real property unless the injured party can prove by a preponderance of the evidence that:

(a) The conduct of said third party occurred on the property;

(b) The conduct of the person who owns, leases, operates, maintains or manages the property actively and affirmatively, with a degree of conscious decision-making, impelled the conduct of said third party; and

(c) The third party's conduct proximately caused the economic and noneconomic damages suffered by the injured party.

Civil liability may not be based on the prior violent nature of the third party whose acts or omissions proximately caused the claimed injury or damage unless the person who owns, leases, operates, maintains or manages the property has actual, not constructive, knowledge of the prior violent nature of said third party.

For purposes of this section, "premises-liability action" means a civil action based upon the duty owed to someone injured on a landowner's premises as a result of conditions or activities on the land.

The bill also amends Miss. Code Ann. § 85-5-7 to provide that, for any premises-liability action, as defined above, alleging injury as a result of the willful, wanton or intentional tortious conduct of a third party on commercial or other real property in the State of Mississippi, "fault" shall include any tort which results from an act or omission committed with a specific wrongful intent.

LEGISLATION

New York

Reporting

2019 NY S 1509. Enacted 4/12/2019. Effective immediately.

This bill amends N.Y. Real Prop. Law § 566, regarding the annual report of manufactured home park owners or operators, to provide that the reporting of such information to the commissioner of taxation and finance pursuant to subparagraph (B) of paragraph six of subsection (eee) of section six hundred six of the tax law shall be deemed to satisfy the requirements of this paragraph. That the commissioner may not be the primary recipient of such registration statement shall not be construed to limit, alter or diminish the ability or responsibility of the division of housing and community renewal in regards to enforcement of this section or any other applicable laws. The commissioner may request additional or corrected information to be filed by each manufactured home park owner or operator as he or she deems necessary to carry out proper oversight of such manufactured home parks. The commissioner shall annually make publicly available on its website a report of the data collected pursuant to this subdivision or subparagraph (B) of paragraph six of subsection (eee) of section six hundred six of the tax law, not including any personally identifiable information.

The bill also amends N.Y. Tax Law § 606 to provide that the commissioner may implement an electronic system for the reporting of information by owners and operators of manufactured home parks, as defined by section two hundred thirty-three of the real property law. Upon the implementation of such a system, each such owner and operator shall file electronic statements with the commissioner according to a schedule to be determined by the commissioner. Such statement shall require reporting of names of all persons owning an interest in the park, the services provided by the park owner to the tenants, the name of the agent designated pursuant to subdivision l of section two hundred thirty-three of the real property law, the names and addresses of all tenants of the park, whether the tenant leases or owns the home, the rent set for each lot in the park, and such additional information as the commissioner may deem necessary for the proper administration of the STAR exemption established pursuant to section four hundred twenty-five of the real property tax law and the STAR credit and any other property tax-based credit established pursuant to this section. In the case of the first registration statement filed in a calendar year, such statement shall also include a copy of all current manufactured home park rules and regulations. In the case that the manufactured home park rules and regulations are modified after the filing of the first registration statement in a calendar year, the next subsequent registration statement shall also include a copy of such rules and regulations. The commissioner shall

provide the commissioner of housing and community renewal with the information contained in each report no later than thirty days after the receipt thereof.

LEGISLATION
Utah
Discrimination - Appeals

2019 UT H 38. Enacted 3/22/2019. Effective 5/14/2019.

This bill amends Utah Code Ann. §§ 57-21-9 and 57-21-10 to permit an aggrieved person to appeal a determination of a director of the Division of Antidiscrimination and Labor dismissing a complaint alleging housing discrimination under the Fair Housing Act.

LEGISLATION
Utah
Support animals

2019 UT H 43. Enacted 3/25/2019. Effective 5/13/2019.

This bill amends Utah Code Ann. § 62A-5b-102 to define "Support animal" as an animal, other than a service animal, that qualifies as a reasonable accommodation under federal law for an individual with a disability.

The bill amends Utah Code Ann. § 62A-5b-104, Right to be accompanied by service animal or support animal -- Security deposits – Discrimination – Liability, by deleting the provision that the section does not prohibit an owner or lessor of private housing accommodations from charging a person, including a person with a disability, a reasonable deposit as security for any damage or wear and tear that might be caused by a service animal if the owner or lessor would charge a similar deposit to other persons for potential wear and tear.

The bill provides that an owner or lessor of private housing accommodations:

(i) may not, in any manner, discriminate against an individual with a disability on the basis of the individual's possession of a service animal. or a support animal, including by charging an extra fee or deposit for a service animal or a support animal; and

(ii) may recover a reasonable cost to repair damage caused by a service animal or a support animal.

An individual with a disability or an individual accompanied by an animal that is in training to become a service animal or a police service canine is liable for any loss or damage the individual's accompanying service animal, support animal, or animal described causes or inflicts to the premises of a place specified in Section 62A-5b-103.

Nothing in this section prohibits the exclusion, as permitted under federal law, of a service animal or a support animal from a place described in Section 62A-5b-103.

The bill amends Utah Code Ann. § 62A-5b-106, Interference with rights provided in this chapter -- Misrepresentation of rights under this chapter, to provide that an individual is guilty of a class C misdemeanor if:

(c) the individual, except for an individual with a disability, uses an animal to gain treatment or benefits only provided for an individual with a disability.

LEGISLATION
Virginia
Renter's insurance - Notice

2018 VA H 1660. Enacted 3/14/2019. Effective 7/1/2019.

This bill amends Va. Code Ann. §§ 55-225.24 and 55-248.7.2, to provide that, if a rental agreement does not require the tenant to obtain renter's insurance, the landlord shall provide a written notice to the tenant, prior to the execution of the rental agreement, stating that (i) the landlord is not responsible for the tenant's personal

property, (ii) the landlord's insurance coverages do not cover the tenant's personal property, and (iii) if the tenant wishes to protect his personal property, he should obtain renter's insurance. The notice shall inform the tenant that any such renter's insurance obtained by the tenant does not cover flood damage and advise the tenant to contact the Federal Emergency Management Agency (FEMA) or visit the websites for FEMA's National Flood Insurance Program or for the Virginia Department of Conservation and Recreation's Flood Risk Information System to obtain information regarding whether the property is located in a special flood hazard area. Any failure of the landlord to provide such notice shall not affect the validity of the rental agreement. If the tenant requests translation of the notice from the English language to another language, the landlord may assist the tenant in obtaining a translator or refer the tenant to an electronic translation service. In doing so, the landlord shall not be deemed to have breached any of his obligations under this chapter or otherwise become liable for any inaccuracies in the translation. The landlord shall not charge a fee for such assistance or referral.

LEGISLATION
Virginia
Renter's insurance - Notice

2018 VA H 2304. Enacted 3/14/2019. Effective 7/1/2019.

This bill amends Va. Code Ann. §§ 55-225.24 and 55-248.7.2 (also amended by VA H 1660) to provide that if a landlord obtains renter's insurance for his tenants, the summary of the insurance policy provided by the landlord, or the certificate evidencing the coverage being provided to the tenant shall include a statement regarding whether the insurance policy contains a waiver of subrogation provision. Any failure of the landlord to provide such summary or certificate, or to make available a copy of the insurance policy, shall not affect the validity of the rental agreement.

LEGISLATION
Virginia
Unlawful detainer - Appeals

2018 VA S 1626. Enacted 3/21/2019. Effective 7/1/2019.

This bill amends Va. Code Ann. § 16.1-107, Requirements for appeal, to add:

In cases of unlawful detainer for a residential dwelling unit, notwithstanding the provisions of Section 8.01-129, an appeal bond shall be posted by the defendant with payment into the general district court in the amount of outstanding rent, late charges, attorney fees, and any other charges or damages due, as contracted for in the rental agreement, and as amended on the unlawful detainer by the court. If such amount is not so paid, any such appeal shall not be perfected as a matter of law. Upon perfection of an appeal, the defendant shall pay the rental amount as contracted for in the rental agreement to the plaintiff on or before the fifth day of each month. If any such rental payment is not so paid, upon written motion of the plaintiff with a copy of such written motion mailed by regular mail to the tenant, the judge of the circuit court shall, without hearing, enter judgment for the amount of outstanding rent, late charges, attorney fees, and any other charges or damages due as of that date, subtracting any payments made by such tenant as reflected in the court accounts and on a written affidavit submitted by the plaintiff, plaintiff's managing agent, or plaintiff's attorney with a copy of such affidavit mailed by regular mail to the tenant, and an order of possession without further hearings or proceedings in such court. Any funds held in a court account shall be released to the plaintiff without further hearing or proceeding of the court unless the defendant has filed a motion to retain some or all of such funds and the court, after a hearing, enters an order finding that the defendant is likely to succeed on the merits of a counterclaim alleging money damages against the plaintiff, in which case funds shall be held by order of such court.

LEGISLATION
Virginia
Landlord/Tenant – Lot Rental - More

2019 VA S 1080. Enacted 3/21/2019. Effective 10/1/2019.

This bill creates Title 55.1 (Property and Conveyances) as a revision of existing Title 55 (Property and Conveyances). Title 55.1 consists of 29 chapters divided into five subtitles: Subtitle I (Property Conveyances), Subtitle II (Real Estate Settlements and Recordation), Subtitle III (Rental Conveyances), Subtitle IV (Common Interest Communities), and Subtitle V (Miscellaneous). The bill organizes the laws in a more logical manner, removes obsolete and duplicative provisions, and improves the structure and clarity of statutes pertaining to real and personal property conveyances, recordation of deeds, rental property, common interest communities, escheats, and unclaimed property.

The bill includes:

Article 13.1. Warrants in Distress.

Article 15.1. Waste. (Providing that any tenant of land or any person who has aliened land who commits any waste while he is in possession of such land, unless he has special license to do so, shall be liable for damages.)

CHAPTER 12. FIRST-TIME HOME BUYER SAVINGS PLAN ACT.

TITLE 55.1. PROPERTY AND CONVEYANCES.

CHAPTER 3. FORM AND EFFECT OF DEEDS AND COVENANTS; LIENS.

SUBTITLE II. REAL ESTATE SETTLEMENTS AND RECORDATION.

CHAPTER 6. RECORDATION OF DOCUMENTS.

Including Article 8. Uniform Real Property Electronic Recording Act.

SUBTITLE III. RENTAL CONVEYANCES.

CHAPTER 12. VIRGINIA RESIDENTIAL LANDLORD AND TENANT ACT.

CHAPTER 13. MANUFACTURED HOME LOT RENTAL ACT.

LEGISLATION
Virginia
Unlawful detainer – Government shut down

2018 VA S 1737. Enacted 4/3/2019. Effective 7/1/2019. Expires 9/30/2019.

This bill provides civil relief for citizens of the Commonwealth who are employees or contractors of the United States government who have been furloughed, or otherwise are or were not receiving wages or payments, as a result of the partial closure of federal government; relates to rental agreements and mortgage foreclosures.

Provides that any tenant who is a defendant in an unlawful detainer for nonpayment of rent for rent due after December 22, 2018, seeking a judgment for the payment of money or possession of the premises shall be granted a 30-day continuance of such unlawful detainer action from the initial court date if the tenant appears on such court date and provides written proof that he was furloughed or otherwise was or is not currently receiving wages or payments as a result of the partial closure of the United States government beginning on December 22, 2018, and is (i) an employee of the United States government, (ii) an independent contractor for the United States government, or (iii) an employee of a company under contract with the United States government. The provisions of this section shall not apply if the landlord has filed a material noncompliance notice for a non-rent violation of the rental agreement or of the Code of Virginia.

Any homeowner who, after December 22, 2018, defaults on a note that is secured by a one-family to four-family residential property located in the Commonwealth and is subject to a foreclosure proceeding on any mortgage or to the execution of or sale under any deed of trust shall be

granted a 30-day stay of such proceeding if the homeowner requests a stay and provides written proof to his lender that he was furloughed or otherwise was or is not currently receiving wages or payments as a result of the partial closure of the United States government beginning on December 22, 2018, and is (i) an employee of the United States government, (ii) an independent contractor for the United States government, or (iii) an employee of a company under contract with the United States government.

Any owner who rents a one-family to four-family residential dwelling unit located in the Commonwealth to a tenant as defined in Section 55-225.02 or 55-248.4 and who, after December 22, 2018, defaults on a note that is secured by such dwelling unit and is subject to a foreclosure proceeding on any mortgage or to the execution of or sale under any deed of trust shall be granted a 30-day stay of such proceeding if the owner requests a stay and provides written proof to his lender that his tenant was furloughed or otherwise was or is not currently receiving wages or payments as a result of the partial closure of the United States government beginning on December 22, 2018, and is (i) an employee of the United States government, (ii) an independent contractor for the United States government, or (iii) an employee of a company under contract with the United States government.

The provisions of this act shall not apply in any instance where a separate, signed legal agreement exists between a landlord and tenant or homeowner and mortgage holder to stay legal action or defer the filing of an unlawful detainer motion for nonpayment of rent or foreclosure proceeding on any mortgage or to the execution of or sale under any deed of trust for a term of 30 days or greater.

PRESS RELEASE
DOJ
SCRA

The Justice Department announced that PRG Real Estate Management and several related entities have agreed to pay up to $1,590,000 to resolve allegations that they violated the Servicemembers Civil Relief Act (SCRA) by obtaining unlawful court judgments against military tenants and by charging improper lease termination fees. This settlement is the largest ever obtained by the Department against a landlord or property management company for violations of the SCRA.

Under the settlement, PRG will pay up to $1,490,000 to compensate 127 servicemembers who had 152 unlawful default judgments entered against them and $34,920.39 to compensate 10 servicemembers who were charged early lease termination fees in violation of the SCRA. PRG will also pay a civil penalty of $62,029 to the United States. The settlement also requires PRG to repair the credit of affected servicemembers, provide SCRA training to its employees and develop new policies and procedures consistent with the SCRA.

In a complaint filed in the United States District Court for the Eastern District of Virginia, the Department alleged that from 2006 to 2017, PRG obtained at least 152 default judgments against 127 SCRA-protected servicemembers by failing to disclose their military service to the court or by falsely stating that they were not in the military.

Landlords and lenders can verify an individual's military status by searching the Defense Manpower Data Center's free publicly available website or by reviewing their files to see if there are applications, military leave and earnings statements, or military orders indicating military status.

The complaint further alleged that PRG imposed unlawful charges against servicemember-tenants who attempted to terminate their leases early in order to comply with military orders. The SCRA allows military tenants to

terminate a residential lease early if the servicemember receives deployment or permanent change of station orders or enters military service during the term of the lease. If a tenant terminates a lease pursuant to the SCRA, the landlord may not impose any early termination fee.

PRESS RELEASES

HUD

Discrimination – Mold remediation

The U.S. Department of Housing and Urban Development (HUD) announced that Lakes and More Realty, Inc., operating as Bemidji Property Management, and the owners of a rental home in Beltrami County, MN, will pay $74,000 under a Consent Order resolving allegations that they refused to rent the house to a family of five adults and six minor children because they are Native American and Hispanic, and had minor children.

HUD filed a charge of discrimination in the case in August 2018 after the owners of the rental home refused to rent the six-bedroom residence to the multi-generational family. HUD's charge alleged that the owners and real-estate broker discouraged the family from renting the home by offering them less favorable rental terms, including increasing the requested monthly rent by $1,000.

Under the terms of the Consent Order, the respondents will pay $74,000 to the families impacted; place a fair-housing advertisement in the local newspaper; and the real-estate broker will take fair housing and multicultural-sensitivity training.

The U.S. Department of Housing and Urban Development (HUD) also announced the approval of a Conciliation Agreement with a landlord and agent in San Francisco, CA, resolving allegations that they refused to rent to a tenant with disabilities because he had an emotional support animal.

The case came to HUD's attention when an individual with disabilities filed a complaint alleging that he was denied the opportunity to rent an apartment because he had an emotional support animal. HUD's investigation found the landlord and agent were explicitly informed that the prospective tenant's animal is prescribed by a doctor and allowed under fair housing laws, but they still refused to consider his tenancy because of the animal.

Under the terms of the agreement, the owner will pay the complainant $9,000 and both respondents will attend fair housing training.

The U.S. Department of Housing and Urban Development (HUD) also announced the approval of a Conciliation Agreement with Highland Downs Apartments in Duarte, CA. The agreement resolves allegations that Downs, LLC and EMNA Management, Inc., the owner and manager of the development, refused to remediate mold at the property as a reasonable accommodation for a couple with disabilities and retaliated against them for asking that the mold be removed.

The case came to HUD's attention when a couple with disabilities filed a complaint alleging that the owner and management company for their apartment building refused to remove mold that was present in the building, as the couple had requested. The couple also alleged that the owners retaliated against them for making the reasonable accommodation request by increasing their rent and issuing the couple a termination of lease notice. The residents moved out after receiving the notice.

Under the terms of the agreement, the owner and property manager will pay the couple $6,000, require their employees to take fair housing training, and adopt a fair housing policy that includes reasonable accommodation guidance, which will be distributed to all leasing and management staff and property tenants.

DEFAULT SERVICING

CASE LAW

RESPA – Private right of action

CASE NAME: *Lucas v. New Penn Fin., LLC*
DATE: *01/31/2019*
CITATION: *United States District Court for the District of Massachusetts. LEXIS 15219*

The court held that 12 U.S.C. § 2605(f) provides for a private right of action against a servicer who fails to comply with 12 C.F.R. § 1024.35, relating to error resolution procedures.

CASE LAW

TILA – Electronic Filing Fees

CASE NAME: *Hall v. Republic Fin., LLC (In re Hall)*
DATE: *02/05/2019*
CITATION: *United States Bankruptcy Court for the Northern District of Alabama, Southern Division. LEXIS 342*

The Debtor filed bankruptcy and Republic Finance filed its proof of claim in the amount of $855.35. Attached to the proof of claim were, among other things, a Combination Promissory Note, Truth in Lending Disclosure Statement and Security Agreement dated March 30, 2017 and a UCC Financing Statement recorded with the Alabama Secretary of State on April 10, 2017. According to the Note and TILA Disclosure, the Debtor borrowed $3,533.54 to be repaid with interest accruing at an annual percentage rate of 45.03%. The "Itemization of the Amount Financed" section of the Note and TILA Disclosure reflected that the amount financed included a charge of $24.75 for "Amounts Paid to Public Officials" for filing and termination fees. According to the recording information on the UCC Statement itself, $15.00 of the charge was attributed to "File" and the remaining $9.75 to "Access."

The Debtor filed an adversary proceeding against Republic Finance as well as an objection to the proof of claim. The Debtor alleged that Republic Finance violated TILA by impermissibly including the entire $24.75 in the "amount financed" section as "amounts paid to public officials" since "only $15.00 was the fee charged by the State for perfecting the Lien, while $9.75 was accepted by the State for payment to a non-government 3rd party electronic filing service provider, for pass through of convenience and access fees . . . ."

The $9.75 in question in this case was paid directly to the government. The Debtor did not allege that Republic Finance kept the fees, nor did she dispute that the State of Alabama required payment of $9.75 if the UCC Statement was transmitted for filing by electronic means.

The Debtor did, however, contend that Republic Finance did not have to file the UCC Statement by electronic means. While that may be true, the Debtor offered nothing to indicate (1) that filing the UCC electronically was impermissible or unreasonable, and (2) that Republic Finance could not exclude from the finance charge a portion of the fee paid to a governmental entity merely because of what the governmental entity subsequently does with the fee.

Alabama law provides that a fee must be paid if a UCC statement is to be filed by electronic means, and TILA provides that fees paid to public officials for perfecting a lien may be excluded from the "finance charge" so long as the fees are itemized and disclosed and prescribed by law.

Motion to Dismiss was granted and the Objection to Claim overruled.

CASE LAW

Bankruptcy – FDCPA

CASE NAME: *Tyler v. Fabrizio & Brook, P.C.*
DATE: *03/04/2019*
CITATION: *United States District Court for the Eastern District of Michigan, Southern Division. LEXIS 33450*

Christine Tyler received a Chapter 7 bankruptcy discharge in March 2015. In September 2016, Fabrizio & Brook, P.C., a law firm that does debt collection work, sent Tyler a one-page letter telling her that foreclosure was starting.

Because the letter was at the center of this case, the Court set it out in some detail. Its subject was "RE" "FDCPA Validation Letter." It began, "BANK OF AMERICA . . . has retained our law firm to begin foreclosure proceedings on the above referenced property. As of the date of this letter, you owe $27,036.78." The letter included a paragraph parroting the requirements of the FDCPA, including that if Tyler did not dispute the debt within 30 days, Fabrizio would "assume" the debt valid. At the bottom of the one-page letter—in bold font and all uppercase letters—was a disclaimer. It stated (without the capitalization) as follows: "Fabrizio & Brook, P.C. is the creditor's attorney and is attempting to collect a debt on its behalf. Any information obtained will be used for that purpose. However, if you are in bankruptcy or have been discharged in bankruptcy, this letter is for informational purposes only and is not intended as an attempt to collect a debt or as an act to collect, assess, or recover all or any portion of the debt from you personally."

Tyler sued Fabrizio, claiming the letter violated the FDCPA. Given her post-bankruptcy status, Tyler said the letter—primarily the "you owe $27,036.78" statement—was false or misleading.

The Court found that it was not plausible that one of the purposes animating Fabrizio's decision to send the letter was to induce payment by Tyler. Fabrizio's letter was not primarily about money owed. Instead it was primarily a notice that foreclosure was beginning.

The letter did not appear to have been a necessary step to foreclose. Michigan requires notice in the form a posting on the property and weekly advertisements in a newspaper. So the letter was a courtesy to Tyler, letting her know that foreclosure proceedings were about to start. Its primary purpose was to inform.

The letter did not explicitly ask for payment, it provided no due date for payment, it provided no payment coupon, and it provided no address to mail payment. Tyler presumably could have paid Bank of America to stave off foreclosure; but the letter does not order, or even really ask, Tyler to do that. As for the assertion that Fabrizio would "assume that the debt [was] valid" unless Tyler disputed it, that language just echoed § 1692g and did not strongly indicate debt collection.

Last—but certainly not least—was the disclaimer telling Tyler that if she had received a discharge in bankruptcy, the letter was "for informational purposes only." That disclaimer—in bold and in all capital letters—appeared on the same page as any content suggesting debt collection. It was arguably the most conspicuous thing on the letter.

In all, the Court found that the letter is not plausibly "in connection with the collection of any debt" as that phrase is used in § 1692e.

Motion to dismiss granted.

CASE LAW

Bankruptcy – FDCPA

CASE NAME: *Holloway v. JTM Capital Mgmt., LLC*
DATE: *03/05/2019*
CITATION: *United States District Court for the Northern District of Ohio, Eastern Division, LEXIS 34980*

Holloway filed Chapter 7 on July 28, 2017. She received a discharge of all her unsecured debt on November 1, 2017. On May 17, 2018, Holloway viewed her TransUnion credit report showing Defendant JTM Capital Management LLC. requested an account review of Holloway's account on December 26, 2017. Holloway alleged she did not owe any debt to JTM on the date she filed for bankruptcy. The TransUnion credit report indicated that the reason for JTM's review of Holloway's account was for "Collection." However, Holloway contended JTM misrepresented the character of the debt because it had already been

discharged in bankruptcy, therefore, JTM could not legally collect on the debt. Holloway further alleged JTM was a debt collector as defined by the FDCPA because it used the instrumentalities of interstate commerce to collect debts in default for which it was not the original lender.

JTM moved to dismiss Holloway's FDCPA and Ohio Consumer Sales Practices Act ("OCSPA") claims because JTM was not a "debt collector" as defined by the FDCPA nor was it a "supplier" under the OCSPA. According to JTM, it was a passive debt purchaser that did not collect debts. Neither was JTM a supplier under the OCSPA because it merely reviewed a credit report but took no further action.

The Court found that, at this stage of the proceedings, Holloway plausibly alleged JTM met the definition of "Debt collector" under § 1692a(6) because JTM's principal purpose was the collection of consumer debts owed to third parties.

In addition, while the JTM communication with TransUnion sought information from TransUnion rather than supplying information to TransUnion about Holloway's debt, it did convey one piece of information - i.e. that it sought information for purposes of collection. It also raised the question whether JTM could have gained access to Holloway's credit report if it did not allege it was for collection since the Complaint alleged the debt was discharged. Furthermore, Holloway alleged violations of subsections 1692e & f for false representations and deceptive practices for JTM's representing the debt was for collection when it was in fact discharged and therefore, uncollectable.

Further, the Ohio Supreme Court has stated that the OCSPA also provides protections for consumer debtors against debt collectors and their attorneys. Holloway alleged amongst other claims that JTM misrepresented the debt owed as it could not collect on the debt as it was discharged in bankruptcy. This supported a claim under the OCSPA. Furthermore, the Court, on a Motion to Dismiss, held that JTM's activities may effect consumer transactions such that the Court found it plausible that JTM was a supplier under the OCSPA.

JTM's Motion to Dismiss denied.

CASE LAW

Bankruptcy – Ride-through

CASE NAME: *In re Seiffert*
DATE: *03/08/2019*
CITATION: *United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division. LEXIS 869*

The Debtors purchased a used manufactured home. The Mobile Home was the Debtors' personal property. The Debtors entered into a Retail Installment Contract held by 21st Mortgage pursuant to which 21st Mortgage held a valid and perfected purchase money security interest in the home.

The Debtors filed a Chapter 7. The Debtors also filed their Official Form 108 Statement of Intention for Individuals Filing Under Chapter 7 (the "First Statement of Intention to Reaffirm"), electing to retain the Mobile Home and enter into a reaffirmation agreement. The Debtors were, and remained, current on their payment obligations to 21st Mortgage.

The Debtors did not enter into or file a reaffirmation agreement with 21st Mortgage. Therefore, the § 362(a) automatic stay terminated as to the Mobile Home, permitting 21st Mortgage to pursue its rights and remedies regarding the Mobile Home as permitted by the Retail Installment Contract and applicable nonbankruptcy law.

The Debtors filed an "Amended Statement of Intention to Surrender" reflecting their election to "surrender" the Mobile Home, as opposed to entering into a reaffirmation agreement. Although the automatic stay had terminated, 21st Mortgage filed Motions requesting orders (i) "delaying Debtors' discharge until the [Mobile Home] has in fact been surrendered and secured by 21st Mortgage

Corporation;" and (ii) "allow[ing] 21st Mortgage Corporation to secure the [Mobile Home]."

The Debtors were not in default of any provision or covenant of the Retail Installment Contract. In addition, the Retail Installment Contract did not contain an ipso facto clause making the filing of a bankruptcy petition an event of default. So unless the Debtors default in the future, 21st Mortgage may be precluded from protecting its interests in the Mobile Home or pursuing a foreclosure until a post-discharge default occurs. As a result, 21st Mortgage argued that the Debtors were attempting a "Ride Through" in violation of § 521(a)(2) by retaining possession of the Mobile Home and making payments without having to reaffirm or redeem the Mobile Home.

In this case, the Debtors failed to timely take the necessary actions to perform their original intention by formally entering into a reaffirmation agreement with 21st Mortgage as required by § 521(a)(2)(B). As a result, the § 362(a) automatic stay terminated as of November 9, 2018, permitting 21st Mortgage to pursue its available rights and remedies, if any, under the Retail Installment Contract and applicable nonbankruptcy law. The Bankruptcy Code does not provide or identify any other remedy available to 21st Mortgage resulting from the Debtors' failure to comply with § 521(a)(2).

Because the statute does not include language that requires a debtor to undertake some affirmative action to effectuate the surrender option, the Debtors were not required to affirmatively deliver the Mobile Home to 21st Mortgage.

The circumstances set forth in Rule 4004(c) that authorize a bankruptcy court to delay a discharge are both specific and limited. An individual debtor's failure to perform his or her duties under § 521(a)(2) of the Bankruptcy Code is not one of the grounds identified in subparagraphs (A) through (L) of Rule 4004(c)(1).

The Court found that the Debtors' mere failure to "in fact, surrender" the Mobile Home to 21st Mortgage did not constitute a meritorious ground under § 727(a) to delay the entry of a discharge order.

CASE LAW

Foreclosure – Statute of limitations

CASE NAME: *Green v. Specialized Loan Servicing LLC*
DATE: *03/11/2019*
CITATION: *United States Court of Appeals for the Eleventh Circuit. LEXIS 7066*

In 2008, Green stopped making payments on his mortgage loan. In February 2009, Deutsche Bank filed a foreclosure action against Green based on the default. According to Green, the case was eventually involuntarily dismissed in 2011 for "Plaintiff's failure to file an amended complaint by the deadline set by the court."

In April of 2015, SLS sent Green a notice of default based on his missed payment of July 1, 2010, and subsequent payments. The Notice of Default also warned Green that continued failure to pay "may result in acceleration of the entire balance outstanding." Deutsche Bank (through its loan servicer, SLS) then filed another foreclosure suit against Green on June 30, 2015, alleging that he defaulted by failing make the payment that was due July 1, 2010, and all subsequent payments, and that SLS was accelerating the note, meaning Green then owed the full remaining balance due to SLS.

Green sued, alleging that SLS violated the FDCPA by trying to collect the debt owed under the mortgage even though some of the amount owed was supposedly barred from recovery under Florida's applicable five-year statute of limitations.

The district court dismissed the complaint, finding that Green's argument regarding the Florida statute of limitations for debt collection was "a matter to be raised as a defense in a foreclosure case—not as an affirmative claim under an FDCPA claim related to a mortgage." The court also found that none of the requested payment amount was time-barred. Green appealed.

The primary issue on appeal was whether a party can seek the amounts of installment payments due prior to five years before the action.

Citing *In re BCML Holding LLC*, No. 18-11600-EPK, 2018 Bankr. LEXIS 1530, the Court found that when a lender seeks judgment on an accelerated debt, it makes no sense to suggest that any component of that accelerated obligation should be excluded from the judgment because it "came due" more than five years prior. It did not come due more than five years prior. It came due upon acceleration. It is all due presently, both what was to be paid on prior installment dates and what would otherwise be due on future installment dates. The installment dates no longer matter for purposes of the accelerated debt; it is all one debt.

Affirmed.

CASE LAW

FDCPA – Amount due

CASE NAME: *Kolbasyuk v. Capital Mgmt. Servs., LP*
DATE: *03/11/2019*
CITATION: *United States Court of Appeals for the Second Circuit. LEXIS 7204*

CMS sent Kolbasyuk a dunning letter stating the present amount of Kolbasyuk's debt, as well as the identity of the original and current creditor. The letter contained CMS's address and contact information, including a website at which Kolbasyuk could submit his payment. The letter noted that it was a "communication . . . from a debt collector." It also contained the following language:

As of the date of this letter, you owe $5918.69. Because of interest, late charges, and other charges that may vary from day to day, the amount due on the day you pay may be greater. Hence, if you pay the amount shown above, an adjustment may be necessary after we receive your check, in which event we will inform you before depositing the check for collection. For more information, write the undersigned or call 1-877-335-6949.

Kolbasyuk filed a putative class action alleging that the letter violated Sections 1692e and 1692g of the FDCPA because it failed to inform him, inter alia, "what portion of the amount listed is principal," "what 'other charges' might apply," "if there is 'interest,'" "when such interest will be applied," and "what the interest rate is." Kolbasyuk also claimed that the letter conveyed the mistaken impression "that the debt could be satisfied by remitting the listed amount as of the date of the letter, at any time after receipt of the letter."

The district court dismissed Kolbasyuk's complaint, holding that CMS's letter violated neither of the two provisions that Kolbasyuk cited. The district court noted that the letter "stated the amount plaintiff owed as of its date" and "stated that the amount owed may increase due to interest and fees." Kolbasyuk appealed.

The Court held that a debt collection letter that informs the consumer of the total, present quantity of his or her debt satisfies 15 U.S.C. § 1692g notwithstanding its failure to inform the consumer of the debt's constituent components or the precise rates by which it might later increase. The Court further held that such a letter does not violate 15 U.S.C. § 1692e for failure to inform the consumer that his or her balance might increase due to interest or fees when the letter contains the "safe harbor" language previously ratified in *Avila v. Riexinger & Associates, LLC*, 817 F.3d 72 (2d Cir. 2016).

Affirmed.

CASE LAW

Foreclosure – Statute of limitations

CASE NAME: *Bank of N.Y. Mellon v Dieudonne*
DATE: *03/13/2019*
CITATION: *Supreme Court of New York, Appellate Division, Second Department. LEXIS 1742*

The plaintiff in this mortgage foreclosure action contended that it lacked the authority to exercise its contractual option to accelerate the maturity of the entire

balance of the loan it sought to recover. The plaintiff argued that it was prevented from validly accelerating the debt by virtue of a reinstatement provision in the subject mortgage which gave the borrower the option, under certain circumstances, to effectively de-accelerate the maturity of the debt. The plaintiff further argued that the statute of limitations did not begin to run until the borrower's rights under the reinstatement provision in the subject mortgage were extinguished.

The mortgage at issue is a uniform instrument issued by Fannie Mae and Freddie Mac for use in New York.

The Court concluded that the reinstatement provision contained in the subject mortgage was not a condition precedent to the acceleration of the mortgage and did not prevent the plaintiff from validly exercising its option to accelerate. A cause of action for payment of a sum of money allegedly owed pursuant to a contract accrues when the plaintiff "possesses a legal right to demand payment." Accordingly, the statute of limitations started to run when the plaintiff exercised its option to accelerate.

Here, paragraph 22 of the subject mortgage unequivocally set forth the conditions that had to be satisfied before the plaintiff was contractually entitled to exercise its option to accelerate the entire outstanding debt. The language of the mortgage makes clear that the plaintiff is entitled to exercise its option to accelerate "if all of th[ose] conditions . . . are met." The reinstatement provision in paragraph 19 of the mortgage was not referenced in, or included among, those conditions listed in paragraph 22. Nor does the reinstatement provision in paragraph 19 of the mortgage include any language indicating that it serves as a condition precedent to the plaintiff's right to accelerate the outstanding debt. To the contrary, the language of paragraph 19 indicates that the plaintiff's right to accelerate the entire debt may be exercised before the defendant's rights under the reinstatement provision in paragraph 19 are exercised or extinguished. Accordingly, contrary to the plaintiff's contention, the extinguishment of the defendant's contractual right to de-accelerate the maturity of the debt pursuant to the reinstatement provision in paragraph 19 of the mortgage was not a condition precedent to the plaintiff's acceleration of the mortgage.

Affirmed.

CASE LAW

Collection – Attorney representation

CASE NAME: *LTD Fin. Servs., L.P. v. Collins*
DATE: *03/15/2019*
CITATION: *Supreme Court of Appeals of West Virginia. LEXIS 85*

Respondent Collins filed a complaint against petitioner alleging multiple violations of the West Virginia Consumer Credit and Protection Act.

On December 19, 2014, petitioner placed a telephone collection call to respondent. The call was recorded. During the call, respondent advised that he was represented by counsel and provided his counsel's name and telephone number. As the circuit court found, "[t]he name of [respondent's] counsel and his status as [respondent's] counsel was clearly spoken in the recording." However, "[t]he telephone number . . . was difficult to ascertain because [petitioner's] collector . . . began speaking over [respondent] and interrupted him as he attempted to provide this information." Following the call, petitioner contacted respondent at least eleven additional times.

David John, petitioner's CEO, testified that petitioner's collectors are not allowed to listen to recordings of their conversations, which precluded the collector in question from simply reviewing the call to correctly input respondent's counsel's telephone number in petitioner's records. The circuit court ruled that petitioner failed to prove the existence and maintenance of procedures reasonably adapted to avoid violating the WVCCPA and further failed to establish any mistake of fact that resulted in the additional calls. Moreover, petitioner did not even claim that the calls in question were unintentional. The

circuit court found that petitioner's conduct was "not so egregious as to warrant the maximum statutory penalty" and awarded respondent "an aggregate award of $18,406."

On appeal, Petitioner's argument in support of its first assignment of error turned on an assumption that intent was a necessary element for respondent to establish in his case-in-chief. The Court did not agree, as the plain language of West Virginia Code § 46A-2-128(e) does not require proof of intent. The creditor — in this case, petitioner — must establish that the calls were unintentional, not the debtor — in this case, respondent.

Because petitioner did not even claim that the calls were unintentional, let alone produce evidence in support of such a defense, the circuit court instead focused its analysis on the second defense of bona fide error of fact.

The circuit court found that a "policy" petitioner referenced, i.e. inputting fake numbers in place of counsel's actual telephone number to prevent further calls to respondent, was not contained anywhere within its policies and procedures produced at trial. Accordingly, the policies and procedures petitioner did produce were clearly unreasonable, given that they resulted in eleven additional attempts to contact respondent after the collector was informed that respondent was represented by counsel.

The circuit court went on to find that petitioner also failed to prove that the eleven violations were the result of a 'bona fide error of fact.' Petitioner's sole witness in its defense indicated that "the factual error was [the] collector's failure to follow [the applicable] policies and procedures." Setting aside the fact that the circuit court found that petitioner did not, in fact, have any policies or procedures to address this issue or establish that the collector in question had been trained or tested on these policies, the circuit court went on to rule that "failing to follow procedures is not a factual error."

Affirmed.

CASE LAW

Foreclosure – FDCPA

CASE NAME: *Obduskey v. McCarthy & Holthus LLP*
DATE: *03/20/2019*
CITATION: *Supreme Court of the United States. LEXIS 2090*

Law firm McCarthy & Holthus LLP was hired to carry out a nonjudicial foreclosure on a Colorado home owned by petitioner Dennis Obduskey. McCarthy sent Obduskey correspondence related to the foreclosure. Obduskey responded with a letter invoking an FDCPA provision, 15 U. S. C. §1692g(b), which provides that if a consumer disputes the amount of a debt, a "debt collector" must "cease collection" until it "obtains verification of the debt" and mails a copy to the debtor. Instead, McCarthy initiated a nonjudicial foreclosure action. Obduskey sued, alleging that McCarthy failed to comply with the FDCPA's verification procedure. The District Court dismissed on the ground that McCarthy was not a "debt collector" within the meaning of the FDCPA, and the Tenth Circuit affirmed. Obduskey again appealed.

The Supreme Court held that a firm conducting a non-judicial foreclosure is not a debt collector under the FDCPA.

CASE LAW

TCPA – Agency

CASE NAME: *Henderson v. United Student Aid Funds, Inc.*
DATE: *03/22/2019*
CITATION: *United States Court of Appeals for the Ninth Circuit. LEXIS 8597*

The Ninth Circuit held that the owner of a loan may be held liable, under an agency theory, for TCPA violations of debt collectors hired by its loan servicer.

CASE LAW

TCPA – Ringless voicemail

CASE NAME: *Schaevitz v. Braman Hyundai, Inc.*
DATE: *03/25/2019*
CITATION: *United States District Court for the Southern District of Florida. LEXIS 48906*

The Court found that a "ringless" voicemail, that is, a direct to voicemail message is a "call" under the TCPA.

CASE LAW

Bankruptcy – Cram down

CASE NAME: *In re Keokuk*
DATE: *04/08/2019*
CITATION: *United States Bankruptcy Court for the Eastern District of Kentucky, Frankfort Division. LEXIS 1084*

The Debtor filed chapter 13 and scheduled real property and a 2007 Giles mobile home located thereon. 21st Mortgage filed a Proof of Claim for $87,531.45 based on a note secured by liens on the Real Estate and the Mobile Home. The liens were not disputed, and the Mobile Home was treated as personal property under Kentucky law.

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

The Debtor's First Amended Plan, proposed to: (i) retain the Real Estate in exchange for equal monthly payments that total the agreed value of the Real Estate pursuant to § 1325(a)(5)(B) ($22,500.00); and (ii) surrender the Mobile Home pursuant to § 1325(a)(5)(C). Confirmation was denied because the First Amended Plan did not pay 21st Mortgage the value of its allowed secured claim as required by § 1325(a)(5)(B).

The Debtor's Second Amended Plan proposed that: the claim of 21st Mortgage, subject to valuation under 506, be treated by $22,500.00, plus interest, of secured value being paid through the plan. The remaining $36,000 of secured value to be satisfied by the transfer of the 2007 Giles mobile home, in which Creditor had a security interest. These agreed upon values were consistent with Creditor's own appraisals.

21st Mortgage objected, arguing that § 1325(a)(5)(B)(ii) does not allow satisfaction of an allowed secured claim with non-cash property. 21st Mortgage also argued that the valuation agreed on by the parties did not contemplate ownership costs, such as insurance and taxes, and distribution expenses, such as a commission or the cost of removal.

The Court found that the Debtor's plan assigned a value of $36,000.00 to the Mobile Home, which represented the § 506(a)(2) value. This price was too high based on information available. Section 506(a)(2) sets the value of the allowed secured claim; it does not address the value of property that is used to pay that allowed secured claim. The value of the Mobile Home as property distributed to pay the allowed secured claim pursuant to § 1325(a)(5)(B)(ii) was less than the § 506(a)(2) value.

Therefore, the Second Amended Plan did not distribute property at least equal to the value of the allowed secured claim as required by § 1325(a)(5)(B)(ii) and was not confirmable.

The Debtor may propose a property-for-debt plan, but the value of the property transferred at confirmation, i.e., the Mobile Home and deferred cash payments, was less than the allowed secured claim of 21st Mortgage. This meant the remaining allowed secured claim paid through deferred cash payments in the plan was not sufficient. The result was a plan that did not satisfy the requirement that the "property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim." 11 U.S.C. § 1325(a)(5)(B)(ii).

21st Mortgage's Objection to Confirmation of Plan was sustained.

LEGISLATION
Arkansas
SCRA – National Guard

2019 AR H 1522. Enacted 3/13/2019. Effective 8/9/2019 (projected).

This bill amends the law to extend state benefits to the members of the Arkansas national guard on state active duty.

The bill amends Ark. Code Ann. § 12-62-704, concerning the applicability of the Arkansas Soldiers' and Airmen's Civil Relief Act, to add an additional subdivision to provide that the subchapter and the benefits of the subchapter apply to and may be claimed by a soldier, airman, or the spouse of a soldier or airman of the Arkansas National Guard who meets one (1) of the following requirements:

(3) The soldier or airman is ordered into active duty by the Governor under state law or under Title 32 of the United States Code for any period of time as a direct result of the execution of an Emergency Management Assistance Compact or proclamation by the Governor.

LEGISLATION
Kentucky
Sheriff's fees

2019 KY H 397. Enacted 3/26/2019. Effective 6/26/2019 (projected).

Amends Ky. Rev. Stat. Ann. § 64.090 to provide that Sheriffs shall (formerly, may) charge and collect a fee of sixty (formerly, forty) dollars ($60) from any person not requesting the service of the sheriff on behalf of the Commonwealth, any of its agencies, or the Department of Kentucky State Police for the services provided in subsection (1) of this section where a percentage, commission, or reasonable fee is not otherwise allowed. If a percentage, commission, or reasonable fee is allowed, that amount shall be paid. If payment is specified from a person other than the person who requested the service, then the person specified shall be responsible for payment.

LEGISLATION
North Carolina
Late fees

2019 NC S 162. Enacted 4/1/2019. Effective immediately.

This bill amends N.C. Gen. Stat. § § 24 10.1 regarding late fees.

All of the following limitations apply to a late payment charge:

(1) A late payment charge shall not exceed any of the following:

a. The amount disclosed with particularity to the borrower pursuant to the federal Consumer Credit Protection Act, Chapter 41 of Title 15 of the United States Code, (Truth in Lending Act) and the regulations adopted under it, if that act applies to the transaction.

b. For a loan or extension of credit that meets all of the following conditions, the greater of thirty five dollars ($35.00) or four percent (4%) of the amount of the payment past due:

1. The loan or extension of credit is made by a bank or savings institution organized under the law of North Carolina or of the United States.

2. The loan or extension of credit is not secured by real property.

3. The loan or extension of credit is governed by G.S. 24 1.1.

4. The loan or extension of credit has an original principal balance greater than or equal to one thousand five hundred dollars ($1,500).

c. For any other type of loan or extension of credit governed by G.S. 24 1.1 or G.S. 24 1.1A, four percent (4%) of the amount of the payment past due.

(3) A late payment charge shall not be charged unless one of the following is true:

a. The payment is 30 days past due or more for a loan on which interest on each installment is paid in advance.

b. The payment is 15 days past due or more for any other loan.

(4) A late payment charge shall not be charged more than once with respect to a single late payment. If a late payment charge is deducted from a payment made on the contract and such the deduction results in a subsequent default on a subsequent payment, no late payment charge may shall be imposed for the default. If a late payment charge has been once imposed with respect to a particular late payment, no late payment charge shall be imposed with respect to any future payment that would have been timely and sufficient but for the previous default. However, when a borrower fails to make an installment payment, and the terms of the loan agreement provide that subsequent payments shall first be applied to the past due balance, and the borrower resumes making installment payments but has not paid all past due installments, then the lender may enforce the contract according to its terms, imposing a separate late payment charge for each installment that becomes due until the default is cured.

(5) A late payment charge shall not be charged on any loan that by its terms calls for repayment of the entire balance in a single payment and not for installments of interest or principal and interest.

(6) A late payment charge shall not be charged unless the lender notifies the borrower within 45 days following the date the payment was due that a late payment charge has been imposed for a particular late payment which late payment must be paid unless the borrower can show that the installment was paid in full and on time. No late payment charge shall be collected from any borrower if the borrower informs the lender that non payment of an installment is in dispute and presents proof of payment within 45 days of receipt of the lender's notice of the late charge.

(c) The provisions of this subsection apply only to home loans made by lenders described in G.S. 24 1.1A(a)(2). Notwithstanding that the note or other loan document sets forth a late payment charge in excess of that permitted in this section, the loan is not unlawful if all of the following are true:

(1) No late fee in excess of those permitted in this section has been assessed or collected by the lender.

(2) One of the following is true:

a. If the loan is executed on or after July 14, 1993, the lender provides written notice to the borrower within 90 days of the date of execution of the loan documents that the late payment charge with respect to the loan shall be four percent (4%) or less.

b. If the loan was executed prior to July 14, 1993, the lender provides written notice to the borrower within six months of that date that the late payment charge with respect to the loan shall be four percent (4%) or less.

LEGISLATION

North Dakota

Foreclosure – Redemption – Abandoned property

2019 ND S 2205. Enacted 3/21/2019. Effective 8/1/2019.

This bill amends N.D. Cent. Code § 28-23-11, Purchaser's right - Sheriff's certificate, to provide that the certificate of sale must include, if subject to redemption, a statement to that effect, including the applicable redemption period.

The bill amends N.D. Cent. Code § 32-19-18, Redemption, to provide that, a party in a foreclosure action or the successor of a party may redeem from the foreclosure sale

within sixty days after the sale, except for abandoned property as provided in section 32-19-19 and agricultural land (adding, abandoned property as provided in section 32-19-19 and).

N.D. Cent. Code § 32-19-19, Injury to property restrained - Abandoned real property, has been amended to provide that if, at the time of the commencement of the foreclosure action and at any time (adding, at the time of the commencement of the foreclosure action and at any time) before the sheriff's sale the mortgagee, or after the sheriff's sale the holder of the sheriff's certificate of sale, reasonably believes that the property is abandoned, the mortgagee or holder of the sheriff's certificate may allege abandonment in the complaint or (adding, may allege abandonment in the complaint or) petition the court to determine abandonment. If by petition, a notice of hearing must be sent by mail to the last-known address of the mortgagor or the party entitled to possession of the real property at least ten days prior to the date of the hearing to determine abandonment. Service by mail is complete upon mailing. If the court determines the real property is abandoned, the court may eliminate the redemption period in the foreclosure judgment or, upon petition (adding, eliminate the redemption period in the foreclosure judgment or, upon petition), grant the mortgagee or holder of the sheriff's certificate immediate possession and use of the property and all benefit and rents from the property until expiration of the redemption period. The court may consider remedies to prevent waste in a foreclosure action or upon a petition for abandonment (adding, in a foreclosure action or upon a petition for abandonment).

The bill amends N.D. Cent. Code § 32-19-23, When notice not required, to add that actual service of the notice before foreclosure is not required if the property is abandoned as provided under section 32-19-23.1, or if service by mail as provided in this chapter has been attempted three times and the attempted service is returned as refused or unclaimed.

N.D. Cent. Code § 32-19-23.1, Abandoned property - Prima facie evidence, has been amended to provide that an affidavit under this section is prima facie evidence of abandonment if the affidavit is made by:

a. The sheriff or sheriff's deputy of the county in which the mortgaged premises is located, or of a building inspector, zoning administrator, housing official, or other municipal or county official having jurisdiction over the mortgaged premises, and the affidavit states the mortgaged premises are not actually occupied; or

b. The party foreclosing a mortgage, holding a sheriff's certificate, or an agent or contractor of the party foreclosing the mortgage, and the affidavit states the affiant has changed the locks on the mortgaged premises and a party having a legal possessory right has not requested entrance to the premises for at least ten days.

An affidavit under this section must include at least one of the following facts:

a. Windows or entrances to the premises are boarded or shuttered, or multiple window panes are broken;

b. Doors to the premises are destroyed, broken, unhinged, or continuously unlocked;

c. Gas, electric, or water service to the premises has been terminated;

d. Rubbish, trash, or debris has accumulated on the mortgaged premises;

e. Law enforcement has received at least two reports of trespassers, vandalism, or other illegal acts on the premises; or

f. The premises is deteriorating and either below or in imminent danger of falling below minimum community standards for public safety and sanitation.

This section applies only to mortgaged property that is:

a. Ten acres or less;

b. Improved with a residential dwelling that consists of fewer than five units and is not a model home or under construction; and

c. Not used in agricultural production.

The bill amends N.D. Cent. Code § 32-19-27, Proofs relative to notice - How made and filed, to provide that proof of service of notice before foreclosure may be made by the return of a sheriff or other officer, or by affidavit of the person making personal service or mailing such notice. Proof of death of the title owner of record may be made by a certified copy of the death certificate or by affidavit of any person having knowledge of the fact. Proof of any other fact necessary to show that the notice was properly served, service was attempted and refused or unclaimed, or the property is abandoned (adding, service was attempted and refused or unclaimed, or the property is abandoned) may be made by certificate of a proper officer or of an abstracter or by affidavit of any person having knowledge of the facts.

LEGISLATION
Utah
Dishonored checks – Fees

2019 UT H 95. Enacted 3/25/2019. Effective 5/13/2019.

This bill amends Utah Code Ann. § 7-15-1 to provide that, with reference to dishonored checks, if the issuer does not pay the amount owed within 15 calendar days from the day on which the notice required is mailed, the issuer is liable for:

(b) collection costs not to exceed $35 (formerly, $20).

The bill makes a conforming change to the notice in Utah Code Ann. § 7-15-2.

LEGISLATION
Virginia
SCRA – Attorney's fees

2018 VA H 1675. Enacted 3/18/2019. Effective 7/1/2019.

This bill amends Va. Code Ann. § 8.01-15.2, Servicemembers Civil Relief Act; default judgment; appointment of counsel, to add that any attorney fees assessed pursuant to this subsection shall not exceed $125, unless the court deems a higher amount appropriate.

INSTALLATION

LEGISLATION
West Virginia
Building codes

2019 WV H 3093. Enacted 3/25/2019. Effective 5/30/2019.

This bill amends W.Va. Code § 8A-11-1, relating to standards for factory-built homes; providing for building code requirements for manufactured housing to be the same as for requirements for other single-family homes.

The bill provides that a governing body of a municipality or a county, when enacting any ordinance or regulation (formerly, residential design standards) for the purposes of regulating the subdivision, development and use of land, shall uniformly apply such design standards and associated review and permitting procedures for factory-built and other single-family constructed homes.

LENDING

BULLETIN
Oklahoma
Changes in dollar amounts

Oklahoma Department of Consumer Credit.

Title 160. Chapter 20. Changes in Dollar Amounts.

Appendix I. Changes In Dollar Amounts - July 1, 2019.

The percentage of change, calculated according to the nearest whole percentage point, between the Index at the end of 2018 and the Reference Base Index is ten percent (10%) or more so various dollar amounts set forth in the Uniform Consumer Credit Code shall change using figures from Consumer Price Index Indicators, Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). [14A:1-106(1), (2) and (3)].

The designated sections and the corresponding dollar amounts to become effective on July 1, 2019, are provided.

BULLETIN
FHA
Mortgage insurance – Home warranties

Issued 3/12/2019.

Mortgagee Letter 2019-05.

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.

This Mortgagee Letter streamlines home warranty requirements for FHA single-family mortgage insurance by removing the policy guidance that require borrowers to purchase 10-year protection plans in order to qualify for certain mortgages on newly constructed single-family homes.

The buyer will still retain a one-year warranty, which provides assurance to FHA that the home was built according to plan, and protects the buyer against defects in equipment, material, or workmanship supplied or performed by the builder, subcontractor, or supplier. The warrantor agrees to fix and pay for the defect and restore any component of the home damaged in fulfilling the terms and conditions of the warranty. The one-year warranty commences on the date that title is conveyed to the buyer, the date that construction is complete, or upon occupancy, whichever date occurs first.

NOTICE OF PROPOSED RULEMAKING
FTC
Privacy rule

16 CFR Part 313.

Privacy of Consumer Financial Information Rule Under the Gramm-Leach-Bliley Act.

The Federal Trade Commission is proposing to amend its Privacy Rule for certain financial institutions subject to the Rule to revise the Rule's scope, to modify the Rule's definitions of ''financial institution'' and ''federal functional regulator,'' and to update the Rule's annual customer privacy notice requirement. The proposed amendments will also remove certain examples in the Rule that apply to financial institutions that now fall outside the scope of the Commission's Rule. This action is necessary to conform the Rule to the current requirements of the Gramm-Leach-Bliley Act (GLBA), as amended by the Dodd-Frank and FAST Acts, and will clarify which financial institutions are covered by the Commission's Rule and their annual customer privacy notice obligations under the Rule.

Written comments must be received on or before June 3, 2019.

BULLETIN
HUD
Facebook – Discrimination

HUD filed a law suit alleging that Facebook unlawfully discriminates by enabling advertisers to restrict which Facebook users receive housing-related ads based on race, color, religion, sex, familial status, national origin and disability.

According to HUD, Facebook mines extensive user data and classifies its users based on protected characteristics. Facebooks' add targeting tools then invite advertisers to express unlawful preferences by suggesting discriminatory options, and Facebook effectuates the delivery of housing-related ads to certain users and not others based on those users' actual or imputed protected traits.

PRESS RELEASE
OCC
Fair Housing - Relationship Loan Pricing

Issued 3/19/2019.

The Office of the Comptroller of the Currency (OCC) assessed a $25 million civil money penalty against Citibank, N.A., for violations of the Fair Housing Act.

The OCC found that the bank had certain control weaknesses related to its Relationship Loan Pricing (RLP) program designed to provide eligible mortgage loan customers either a credit to closing costs or an interest rate reduction. As a result of these control weaknesses, some bank borrowers did not receive the RLP benefit for which they were eligible and were adversely affected on the basis of their race, color, national origin, or sex. Based on these findings, the OCC has determined that the bank violated the Fair Housing Act, 42 U.S.C. § 3601—19, and its implementing regulation, 24 C.F.R. Part 100.

The bank has initiated and largely completed a plan to reimburse all customers who did not receive the appropriate RLP benefit, including those customers affected by these violations, and is taking other appropriate corrective action to prevent future violations. The bank will provide reimbursement to approximately 24,000 customers in the amount of approximately $24 million as a result of the bank's failures and control weaknesses.

The $25 million civil money penalty will be paid to the U.S. Treasury.

LICENSING

LEGISLATION
Montana
Mortgage licensing

2019 MT H 107. Enacted 3/19/2019. Effective 10/1/2019.

This bill adds a new section to the Montana Mortgage Act to provide for mortgage servicer capital requirements.

A mortgage servicer with a portfolio of only nongovernment sponsored enterprise loans must maintain a minimum tangible net worth of $1 million or maintain a $1 million surety bond.

A mortgage servicer with a portfolio of nongovernment sponsored enterprise loans must maintain liquidity, including operating reserves, of 0.00035 times the unpaid principal balance of the portfolio.

A mortgage servicer with 25 or fewer loans, a mortgage servicer that is wholly owned and controlled by one or more depository institutions regulated by a state or federal banking agency, or a mortgage servicer that is also licensed as an escrow business may apply to the department to waive or adjust one or more of the capital requirements.

The continuous maintenance of the minimum liquidity, operating reserves, and tangible net worth required under this section is necessary for continued licensure under this part. Failure to meet or maintain these minimum standards may constitute grounds for denial of an application, issuance of a cease and desist order, license suspension, or license revocation.

The bill adds a new section to provide for mortgage lender net worth requirements.

A mortgage lender must have a minimum net worth of $250,000.

If the net worth of a mortgage lender falls below the minimum net worth set forth, the licensee shall provide a plan, subject to approval of the department, to increase the licensee's net worth to an amount in conformance with this section.

Failure to meet or maintain the minimum net worth standards under this part may constitute grounds for the denial of an application, issuance of a cease and desist order, license suspension, or license revocation.

The bill amends Mont. Code Ann. § 32-9-103 to add the definition of "Service provider" to mean a person who performs activities relating to the business of mortgage origination, lending, or servicing on behalf of a licensee.

Activities relating to the business of mortgage origination, lending, or servicing include:

(i) providing data processing services;

(ii) performing activities in the support of residential mortgage origination, lending, or servicing; and

(iii) providing internet-related services, including web services, processing electronic borrower payments, developing and maintaining mobile applications, system and software development and maintenance, and security monitoring.

Activities relating to the business of mortgage origination, lending, or servicing do not include providing an interactive computer service or a general audience internet or communications platform, except to the extent that the service or platform is specially designed or adapted for the business of mortgage origination, lending, or servicing.

Activities relating to the business of mortgage origination, lending, or servicing performed by a mortgage loan originator, lender, or servicer on its own behalf or as part of mortgage loan originating, lending, or servicing are considered mortgage loan originating, lending, or servicing.

The bill amends Mont. Code Ann. § 32-9-120 to provide that the department may not issue or renew any mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator license if any of the following facts are found during the application procedure:

(h) the applicant has failed to meet the mortgage servicer capital requirements;

(i) the applicant has failed to meet the minimum mortgage lender net worth requirements.

Mont. Code Ann. § 32-9-122 has been amended to provide that the designated manager appointed by a mortgage broker or mortgage lender may be responsible for more than one location. The designated manager is responsible for the mortgage origination activity conducted at each office to which the designated manager is assigned in the NMLS.

Formerly, the broker or lender was required to designate a separate designated manager to serve each branch office that originates a residential mortgage loan.

The bill amends Mont. Code Ann. § 32-9-123 to provide that the amount of the required surety bond for a mortgage servicer must be calculated on the mortgage servicer's total unpaid principal balance of residential mortgage loans as of December 31. The amount of the surety bond must be in the following amount:

(i) $75,000 for an unpaid principal balance that does not exceed $25 million a year;

(ii) $150,000 for an unpaid principal balance of more than $25 million but not exceeding $100 million a year;

(iii) $250,000 for an unpaid principal balance of more than $100 million but not exceeding $500 million a year; or

(iv) $350,000 for an unpaid principal balance of more than $500 million a year.

Formerly, the amount of the bond was specified as $100,000.

The bill amends Mont. Code Ann. § 32-9-128 to provide that the department is considered to have complied with the requirements of law concerning service of process upon sending by common courier with tracking capability (formerly, mailing by certified mail) any notice required or permitted to a licensee under this part, postage prepaid and addressed to the last-known address of the licensee's registered agent for service of process on file with the department, the last-known address of the licensee on file with the department for an in-state licensee, or in the case of an unlicensed person, the last-known address of the person.

Amended Mont. Code Ann. § 32-9-130 now provides that the department may adopt rules:

(a) regarding the mortgage servicer capital requirements provided in [section 1]; and

(b) defining supervisory requirements for designated managers.

The bill amends Mont. Code Ann. § 32-9-133 to provide that if the department finds, after providing a 14-day written notice that includes a statement of alleged violations and a hearing or an opportunity for hearing, as provided in the Montana Administrative Procedure Act, that any person, licensee, service provider, or officer, agent, employee, or representative of the person or licensee (adding, service provider), whether licensed or unlicensed, has violated any of the provisions of this part, has failed to comply with the rules, instructions, or orders promulgated by the department, has failed or refused to make required reports to the department, has furnished false information to the department, or has operated without a required license, the department may impose a civil penalty not to exceed $5,000 for the first violation and not to exceed $10,000 for each subsequent violation.

The bill amends Mont. Code Ann. § 32-9-141 to provide that the department or the department's authorized representatives must be given free access to the offices and places of business and files of all licensees and their service providers (adding, and their service providers).

Mont. Code Ann. § 32-9-149 has been amended to provide that the department may adopt rules to define false, deceptive, or misleading advertising.

The department may also adopt rules to establish requirements for licensee advertising using the internet or any electronic format.

The bill amends Mont. Code Ann. § 32-9-160 to provide that the department may disclose to a licensee information about a service provider of the licensee.

The bill amends Mont. Code Ann. § 32-9-170 to provide that a mortgage servicer shall file with the department a complete, current schedule of the ranges of costs and fees the mortgage servicer charges borrowers for servicing-related activities with the mortgage servicer's application and with any supplemental filings made as often as the schedule of costs and fees is amended.

Formerly, this section required a mortgage servicer was to file with the department a complete, current schedule of the ranges of costs and fees the mortgage servicer charges borrowers for servicing-related activities with the mortgage servicer's application and renewal and with any supplemental filings made from time to time.

LEGISLATION

Utah

Installers

2019 UT H 187. Enacted 3/25/2019. Effective 5/13/2019.

This bill makes changes applicable to Manufactured Home Installers, including the enactment of Utah Code Ann. § 58-55-106, Surcharge fee, to provide:

(1) In addition to any other fees authorized by this chapter or by the division in accordance with Section 63J-1-504, the division shall require each applicant for an initial license, renewal of a license, or reinstatement of a license under this chapter to pay a $1 surcharge fee.

(2) The surcharge fee shall be used by the division to provide each licensee under this chapter with access to an electronic reference library that provides web-based access to national, state, and local building codes and standards.

The bill also amends Utah Code Ann. § 58-56-3.5, Surcharge fee, including Factory built housing set-up contractors and dealers, to provide:

(1) In addition to any other fees authorized by this chapter or by the division in accordance with Section 63J-1-504, the division shall require each applicant for an initial license, renewal of a license, or reinstatement of a license under this chapter to pay a $1 surcharge fee.

(2) The surcharge fee shall be used by the division to provide each licensee under this chapter with access to an electronic reference library that provides web-based access to national, state, and local building codes and standards.

SALES AND WARRANTIES

LEGISLATION

Virginia

Residential Executory Real Estate Contracts Act

2018 VA S 1449. Enacted 3/18/2019. Effective 7/1/2019.

This bill adds Va. Code Ann. §§ 55-252.1 through 55-252.4 relating to the Residential Executory Real Estate Contracts Act.

"Residential executory real estate contract" means an installment land contract, lease option contract, or rent-to-own contract by which a purchaser acquires any right or interest in real property other than a right of first refusal and occupies or intends to occupy the property as his primary residence.

The provisions of this chapter shall not apply to residential executory real estate contracts where the vendor is:

1. A natural person, an estate, or a legal entity that owns no more than two single-family residential dwelling units in the Commonwealth unless the person or entity is an agent, affiliate, subsidiary, or parent company to another legal entity that owns at least one additional residential dwelling unit in the Commonwealth;

2. A real estate licensee pursuant to Chapter 21 (Section 54.1-2100 et seq.) of Title 54.1; or

3. A bank, savings institution, credit union, or mortgage lender licensed under Title 6.2.

Notwithstanding any other provision of law, a residential executory real estate contract shall be subject to the Virginia Residential Landlord and Tenant Act (Section 55-248.2 et seq.).

Notwithstanding any other provision of law, the following provisions shall be applicable to every residential executory real estate contract:

1. The purchaser shall have the right to exercise the option to purchase the property at any time before the option expires, and no fee or penalty shall be charged to any purchaser who exercises the option at an earlier time than anticipated under the contract.

2. If the purchaser defaults in the payment of rent or other requirements under a lease, the vendor may serve notice of such default. If default is limited solely to failure to pay rent or other monetary charges, the vendor may terminate the lease and recover possession of the premises only if the delinquent obligation remains outstanding more than 30 days after notice is served upon the purchaser notifying him of (i) the nonpayment, (ii) the amount of the delinquency, and (iii) the vendor's intention to terminate the lease if the default is not timely cured.

3. The vendor may not forfeit the option payment or any portion of such payment, provided, however, that the vendor may apply the option payment (i) to any amounts owed by such purchaser under the residential executory real estate contract or (ii) as otherwise directed by court order in an interpleader action filed by such vendor pursuant to Section 8.01-364 in a court of competent jurisdiction.

4. If the vendor defaults, the purchaser shall be entitled to bring an action in a court of competent jurisdiction (i) to enjoin further violations; (ii) to recover the purchaser's actual damages; (iii) for specific performance of the contract; (iv) for rescission; or (v) to receive other equitable relief as the court may find appropriate in the interests of justice.

5. The prevailing party in any proceeding under this chapter in a court of competent jurisdiction may be awarded reasonable attorney fees and costs.

A residential executory real estate contract may be recorded among the land records in the office of the clerk of the circuit court where the real property is located.

The provisions contained in this section shall not be waived by contract.

The Board for Housing and Community Development shall develop and make available on its website best practice provisions for residential executory real estate contracts.

LEGISLATION

Virginia

Sales and use taxes – Absorption

2018 VA S 1615. Enacted 3/21/2019. Effective 7/1/2019.

Enacts Va. Code Ann. § 58.1-626.1, Absorption of tax permitted, to provide:

A. A dealer may absorb and assume payment of all or any part of the sales or use tax otherwise due from the purchaser, consumer, or lessee.

B. A dealer shall separately state the sales price of an item and the full amount of sales and use tax due on such item at the point of the sale or transaction, even if the dealer intends to absorb and assume the amount of tax due.

C. For each sale for which the dealer absorbs and assumes all or any part of the sales and use tax due, the dealer shall remit to the Department the full amount of tax due with the return that covers the period in which the dealer completed the sale or transaction.

The bill also provides that That Section 58.1-626 of the Code of Virginia, as it is currently effective and as it shall become effective, is repealed.

Va. Code Ann. § 58.1-626, Absorption of tax prohibited, currently exists in two versions: one effective until 7/1/2022 and one effective after that date.

Va. Code Ann.§ 58.1-612 defines the term "dealer," as used in this chapter, to include every person who:

1. Manufactures or produces tangible personal property for sale at retail, for use, consumption, or distribution, or for storage to be used or consumed in this Commonwealth;

2. Imports or causes to be imported into this Commonwealth tangible personal property from any state

TITLING AND PERFECTION

LEGISLATION
Arizona
Certificate of title - Documentation

2019 AZ S 1052. Enacted 3/22/2019. Effective 8/9/2019 (projected).

(New material in CAPS)

This bill amends Ariz. Rev. Stat. Ann § 28-2051, Application for certificate of title; vision screening test, to provide that a person shall submit the following information with an application for a certificate of title to a new vehicle:

(a) EITHER OF THE FOLLOWING:

(I) A manufacturer's certificate of origin showing the date of sale to the dealer or person first receiving the vehicle from the manufacturer. Before the department issues a certificate of title to a new vehicle, a manufacturer's certificate of origin shall be surrendered to the department.

(II) A FACTORY INVOICE, A FORM THAT IS PROVIDED BY THE DEPARTMENT OR OTHER DOCUMENTATION THAT SHOWS THE DATE OF SALE TO THE DEALER OR THE PERSON WHO FIRST RECEIVED THE VEHICLE FROM THE MANUFACTURER.

LEGISLATION
Arkansas
Expedited title processing

2019 AR S 494. Enacted 3/20/2019. Effective 8/9/2019 (projected).

This bill amends Ark. Code Ann. § 27-14-705 to add:

(e)(1) As used in this section, "expedited title processing service" means the expedited review of an applicant's application for certificate of title.

(2) The Office of Motor Vehicle may provide an expedited title processing service for a motor vehicle subject to registration and issuance of a certificate of title under this chapter upon:

(A) The request of the applicant; and

(B) Payment of an expedited title processing service fee in the amount of ten dollars ($10.00) in addition to the specified title application fees required under subsection (c) of this section.

(3) An expedited title processing service request:

(A) Shall be made in person by the applicant at the Central Revenue Office located at the Charles D. Ragland Taxpayer Services Center in Little Rock, Arkansas;

(B) Shall require that an applicant submit all the required registration forms and payment of the certificate of title application fees and expedited title processing service fee at the time of application;

(C) Shall not guarantee the issuance of a certificate of title; and

(D) Shall be completed by the Office of Motor Vehicle within three (3) business days from the date the applicant submitted the application.

The bill amends Ark. Code Ann. § 27-14-727(c)(3) to provide:

(3) The owner shall include the following with the application:

(B) The certificate of title application fee (deleting, of four dollars ($4.00)) as provided under § 27-14-705(c) and the certificate of title fee under § 27-14-602(b) (§ 27-14-705(c) provides: In addition to the application referred to in subsections (a) and (b) of this section, a title application fee in the amount of eight dollars ($8.00) per motor vehicle is imposed on each title issued, which shall be paid to the office at the time that application for registration thereof is made).

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