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 April 2019 Manufactured Housing Law Update.

Items of interest this month include developments with respect to service animals, changes in inspection fees, and changes to transportation requirements.

There were also changes to the titling process in a few states.

On the lending side, make sure to review the guidance sent to licensees in Maryland regarding licensing requirements and MCR requirements.

These items and more, so read on!

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CASE LAW

Injury – Duty to warn

CASE NAME: *Sarkilahti v. Bristol Grp. L.L.C.*
DATE: *02/21/2019*
CITATION: *2019 Ariz. App. Unpub. LEXIS 218, Court of Appeals of Arizona, Division One*

Sarkilahti filed a complaint alleging she was injured in a fall after stepping off an elevated edge of a concrete porch that provided ingress and egress to Jim and Lourdes Voutour's mobile home. The complaint alleged both the Voutours, as the owners of the mobile home, and Bristol Group, as the lessor of the mobile home pad, owed a duty to warn their invitees of hazards.

Bristol Group moved for summary judgment, disputing that it owed Sarkilahti a duty under either the Restatement (Second) of Torts § 356 or its lease to the Voutours. Sarkilahti asserted a genuine issue of material fact existed as to whether the Voutours appreciated the risk created by the elevated edge of the concrete porch such that Bristol Group would be relieved of its duty.

The Voutours purchased the mobile home four years before Sarkilahti's alleged fall. At that time, the mobile home was already on the pad and elevated above the ground with the concrete porch attached.

The trial court determined that Bristol Group did not owe a duty to Sarkilahti and entered judgment in its favor. Sarkilahti appealed.

The Court found that Bristol Group owed a duty of reasonable care to inspect the property and either remedy the alleged defect or warn the Voutours about it. However, Bristol Group's duty to warn or remedy continued only until the tenants had a reasonable opportunity to appreciate the risk. The Voutours lived in their home for approximately four years before Sarkilahti's alleged injury. Additionally, the Voutours knew the location of the elevated edge, as the porch was used as a means of ingress and egress from the mobile home.

According to the Court, it may have been possible that James Voutour, a quadriplegic, did not have the opportunity to appreciate the risk, based upon his testimony that he entered and left his home via a wheelchair ramp and never left the porch via the elevated edge in question. However, Lourdes Voutour's affidavit merely stated that she "did not appreciate the hazard posed by the porch." This conclusory statement was insufficient to create a genuine question of fact as to whether she had a reasonable opportunity to appreciate the risk.

Sarkilahti failed to develop her argument that a duty is created under the Mobile Home Act in the proceedings before the trial court. Therefore, the argument was waived on appeal.

Finally, Sarkilahti argued the trial court's determination that the porch's dangerous condition was "open and obvious" violated Article 18, Section 5, of the Arizona Constitution, which provides: "[t]he defense of contributory negligence or of assumption of risk shall, in all cases whatsoever, be a question of fact and shall, at all times, be left to the jury." The trial court did not determine any issue related to contributory negligence or assumption of risk. The reference to the "obvious" condition of the porch only related to the Voutour's opportunity to discover the condition and remedy the defect. As such, the decision did not violate the Arizona Constitution.

Affirmed.

CASE LAW

Lease – Rent increase

CASE NAME: *Bevis v. Terrace View Partners, LP*
DATE: *02/28/2019*
CITATION: *2019 Cal. App. Unpub. LEXIS 1476, Court of Appeal of California, Fourth Appellate District, Division One*

Plaintiffs were current or former residents of Terrace View who purchased their mobilehomes from third parties and rented mobilehome spaces in Terrace View from defendants. Terrace View is not subject to a rent control ordinance. New residents of Terrace View were given a choice between a long-term lease or a month-to-month rental agreement. The terms of the long-term leases ranged from three years to ten years, based on the type of lease that was being offered when the tenant moved into the park.

The complaint included 12 causes of action based on allegations that defendants' failure to maintain the park in "good working order and condition" created a nuisance that, along with unreasonably high space rent increases, made it difficult or impossible for park residents to sell their mobilehomes.

A jury found defendants liable under the following causes of action or theories: intentional interference with property rights, breach of the covenant of good faith and fair dealing, nuisance (based on substantially failing to enforce the park's rules and regulations), breach of contract/breach of the covenant of quiet enjoyment, and negligence/negligence per se.

The jury awarded the individual plaintiffs economic, noneconomic, and punitive damages in varying amounts. The total amounts awarded were $1,289,000 in compensatory damages ($759,000 in economic damages and $530,000 in noneconomic damages) and $57 million in punitive damages. After the jury was discharged, the trial court ruled that a "catch-up" provision in defendants' long-term leases that can greatly increase rent at the end of a lease term was unfair in violation of the UCL.

The trial court entered judgment reflecting the jury's awards, and the trial court's ruling on plaintiffs' UCL claim and grant of injunctive relief on that claim. The judgment also reflected the trial court's rulings at the beginning of trial that certain other provisions in the parties' lease agreements violated California's Mobilehome Residency Law or were otherwise unlawful. After the trial court entered the judgment, it issued an order reducing the punitive damages awarded to plaintiffs to match their awards of compensatory damages, making the total amount of punitive damages awarded against defendants $1,289,000. The trial court also awarded attorney fees amount of $2,385,773.70, plus costs, to plaintiffs. Defendants appealed. Plaintiffs also appealed, contending the trial court erred in reducing the jury's award of punitive damages to the amount of compensatory damages.

The Court found that, although the jury's award of economic damages may have included unspecified amounts that could be upheld on appeal if the special verdict form had segregated them, it was clear from the record that the vast majority of the economic damages awarded represented reimbursement for overpayment of rent and diminution in value of homes caused by high rent. Because the award of such damages could not be sustained under any of the theories of liability presented to the jury and it was impossible to sever any properly awarded damages from improperly awarded damages, the Court reversed the entire award of compensatory damages and the attendant awards of punitive damages and attorney fees and costs to plaintiffs.

The Court found that the defendants could not be held liable for charging rental rates that the parties' leases and rental agreements allowed, and that rent may not be limited to a lower rate than a rental agreement allows in the absence of a rent-control ordinance.

Further, the high rental rates plaintiffs paid could not constitute tortious interference with their property rights.

The Court also found that defendants could not be held liable for breach of the implied covenant of good faith and fair dealing by implementing rent increases that the parties' rental agreements expressly authorized or that were subject to an implied limitation and an objectively determined base.

Because the jury rejected plaintiffs' primary nuisance claim based on defendants' alleged failure to maintain the park, it was reasonable to conclude that the main basis for the jury's awards of compensatory and punitive damages was the high rental rates plaintiffs had paid or were paying. Accordingly, the Court could not sustain the jury's unsegregated compensatory damage award on the ground the entire award could be reasonably viewed as compensation on plaintiffs' secondary nuisance claim.

Further, a lessor's charging rental rates that are authorized by contract or law cannot constitute negligence.

The Court found that the jury's compensatory damage award based primarily on high rent was not sustainable as damages that the jury could properly have awarded under plaintiffs' negligence theory.

Nor could defendants be held liable for breach of contract or the covenant of quiet enjoyment by charging rent expressly authorized by a written lease or allowed by law.

The Court's reversal of the compensatory damage awards set the case at large for retrial of plaintiffs' claims and required reversal of the punitive damage and attorney fees awards to plaintiffs.

In light of the fact that the entire basis of the trial court's ruling in plaintiffs' favor on their UCL claim was the trial court's finding that the catch-up provision was unfair, the Court concluded it could be prejudicial to defendants to not allow a retrial of that claim along with plaintiffs' claims for damages. Accordingly, the Court reversed the portion of the judgment adjudicating plaintiffs' UCL claim and vacated the trial court's order finding the catch-up provision was not unconscionable to give the trial court on remand a clean slate to consider the UCL claim, as well as the unconscionability claim included in plaintiffs' 12th cause of action seeking declaratory and injunctive relief.

The Court affirmed the following portions of the judgment that are severable from the portions of the judgment that were reversed and were not challenged on appeal: the ruling that "the lease provisions concerning the right of first refusal, release, and the arbitration provision violate the [Mobilehome Residency Law]"; and the ruling that certain lease provisions restricting claims by residents are unlawful."

The Court found that the following claims remained viable on remand: (1) plaintiffs' cause of action for declaratory relief, seeking a determination that certain provisions in plaintiffs' long-term leases are unconscionable; (2) plaintiffs' cause of action for unfair business practices in violation of the UCL; (3) plaintiffs' nuisance claims that defendants failed to maintain the park in good working order and condition and failed to follow their own park rules that required them to maintain park-owned vacant mobilehomes in good condition; and (4) plaintiffs' claims for breach of contract and breach of the covenant of quiet enjoyment, to the extent these claims are based on conditions in the park and not on high rent. Plaintiffs' cause of action for intentional interference with property rights may be legally viable; however, it cannot properly be based on rental rates allowed by the parties' leases or law.

LEGISLATION

Arkansas

Service animals – Misrepresentation

2019 AR S 654. Enacted 4/15/2019. Effective 7/24/2019.

This bill adds Ark. Code Ann. § 20-14-310, Misrepresentation as a service animal — Civil penalty, to provide:

(a) An individual shall not misrepresent an animal to be a service animal or service animal-in-training to a person or entity that operates a public accommodation.

(b) An individual who violates subsection (a) of this section may be subject to a civil penalty not to exceed two hundred fifty dollars ($250) for each violation.

LEGISLATION

Colorado

Applications

2019 CO H 1106. Enacted 4/25/2019. Effective 8/1/2019.

This bill adds part 9, Rental Application Fairness Act, to article 12 of title 38, Colo. Rev. Stat. §§ 38-12-901 - 38-12-905.

The bill provides that:

A landlord shall not charge a prospective tenant a rental application fee unless the landlord uses the entire amount of the fee to cover the landlord's costs in processing the rental application.

A landlord shall not charge a prospective tenant a rental application fee that is in a different amount than a rental application fee charged to another prospective tenant.

A landlord shall provide to any prospective tenant who has paid a rental application fee either a disclosure of the landlord's anticipated expenses for which the fee will be used or an itemization of the landlord's actual expenses incurred. If a landlord charges an amount based on the average cost of processing the rental application, the landlord shall include information regarding how that average rental application fee is determined.

A landlord shall provide every prospective tenant with a receipt for any application fee received. The landlord may provide a prospective tenant an electronic receipt unless the prospective tenant requests a paper receipt, in which case the landlord shall provide the prospective tenant a paper receipt.

A landlord who receives a rental application fee from a prospective tenant and does not use the entire amount of the fee to cover the landlord's costs in processing the rental application shall remit to the prospective tenant the remaining amount of the fee.

If a landlord uses rental history or credit history as criteria in consideration of an application, the landlord shall not consider any rental history or credit history beyond seven years immediately preceding the date of the application.

If a landlord uses criminal history as a criterion in consideration of an application, the landlord shall not consider an arrest record of a prospective tenant from any time or any conviction of a prospective tenant that occurred more than five years before the date of the application; except that a landlord may consider any criminal conviction record or deferred judgment relating to:

(i) the unlawful distribution, manufacturing, dispensing, or sale of a material, compound, mixture, or preparation that contains methamphetamine, as described in section 18-18-405;

(ii) the unlawful possession of materials to make methamphetamine and amphetamine, as described in section 18-18-412.5;

(iii) any offense that required the prospective tenant to register as a sex offender pursuant to section 16-22-103; or

(iv) any offense described in part 1 or part 6 of article 3 of title 18.

If a landlord denies a rental application, the landlord shall provide the prospective tenant a written notice of the denial that states the reasons for the denial.

A landlord who is required to provide a notice of denial to a prospective tenant shall make a good-faith effort to do

so not more than twenty calendar days after making the decision to deny the prospective tenant's rental application.

Except as otherwise provided, a landlord who violates any provision of this part 9 is liable for treble the amount of the rental application fee, plus court costs and reasonable attorney fees.

A person who intends to file an action pursuant to this section shall notify the landlord of such intention not less than seven calendar days before filing the action.

A landlord who corrects or cures a violation of this part 9 not more than seven calendar days after receiving notice of the violation is not liable for damages as described.

A person who purposefully and in bad faith brings a meritless claim against a landlord under this part 9 is liable for the landlord's court costs and reasonable attorney fees in defending the claim.

LEGISLATION

Indiana

Water and sewer charges

2019 IN H 1664. Enacted 4/18/2019. Effective immediately.

This bill amends Ind. Code § 8-1-2-1.2 to provide that “dwelling unit” includes a lot in a mobile home community or similar multi-user installation.

As used in this section, "landlord" refers to:

(1) an owner of a dwelling unit that is rented or leased to another person; or

(2) a person acting on behalf of a person described in subdivision (1).

A landlord or an association that distributes water or sewage disposal service from a water or sewer utility (formerly a public utility or a municipally owned utility), to one (1) or more dwelling units, condominium units, or members is not a public utility solely by reason of engaging in this activity if the landlord does either of the following (formerly, complies with all of the following):

(1) The landlord or association charges a flat fee that:

(A) is assessed at regular intervals, such as monthly or annually; and

(B) includes water or sewage disposal service;

without separately itemizing or billing for the water or sewage disposal service included in the fee.

(2) Subject to subsection (l), the landlord or association bills tenants, co-owners, or members separately for:

(A) the water or sewage disposal service distributed; and

(B) any costs permitted by subsection (l)(4).

(l) A landlord or an association that bills tenants, co-owners, or members under subsection (k)(2) shall comply with the following:

(1) In the case of a landlord, the total charge for the water or sewage disposal services may not exceed what the landlord paid the water or sewer utility for the same services, less the landlord's own use.

(2) In the case of an association, the total charge for the water or sewage disposal service may not exceed what the association paid the water or sewer utility for the same services, including amounts paid to the utility for water or sewage disposal service provided for common areas and facilities.

(3) The landlord or association shall make a disclosure to each tenant, co-owner, or member that satisfies subsection (m). A disclosure required by this subdivision must be included in one (1) or more of the following, as applicable:

(A) The lease.

(B) The tenant's first bill. or

(C) The co-owner's or member's first bill or assessment for the water or sewage disposal service.

(D) The property's covenants, conditions and restrictions, bylaws, governing documents (as defined in IC 32-25.5-2-3), condominium instruments (as defined in IC 32-25-2-8), or other similar documents.

(E) A separate writing signed by the tenant, co-owner, or member.

(4) A landlord or an association may charge only the following costs:

(A) A reasonable initial set-up fee.

(B) A reasonable administrative fee that may not exceed four dollars ($4) per month.

(C) A reasonable fee for the return for insufficient funds of an instrument in payment of charges.

(m) A disclosure required by subsection (l)(3) must:

(1) be printed using a font that is not smaller than the largest font used in any other part of the document in which the disclosure is included; and

(2) include the following:

(A) A description of the water or sewage disposal services to be provided.

(B) An itemized statement of the fees that will be charged as permitted under subsection (l)(4).

(C) The following statement: "If you believe you are being charged in violation of this disclosure or if you believe you are being billed in excess of the utility services provided to you as described in this disclosure, you have a right under Indiana law to file a complaint with the Indiana Utility Regulatory Commission. You may contact the Commission at (insert phone number for the Commission)."

(n) If a complaint is filed under section 34.5 or 54 of this chapter alleging that a landlord or an association may be acting in violation of this section, the commission shall:

(1) consider the issue; and

(2) if the commission considers necessary, enter an order requiring that billing be adjusted to comply with this section.

LEGISLATION

Iowa

Zoning – Non-conforming use

2019 IA H 701. Enacted 4/23/2019. Effective 7/1/2019.

This bill amends Iowa Code § 335.3 (re: County Zoning) to add that, when there is a replacement of a preexisting manufactured, modular, or mobile home with another manufactured, modular, or mobile home containing no more than the original number of dwelling units, or a replacement of a preexisting site-built dwelling unit with a manufactured, modular, or mobile home or site-built dwelling unit, within a manufactured home community or a mobile home park, the board of supervisors shall not adopt or enforce any ordinance, regulation, or restriction that would prevent the continuance of the property owner's lawful nonconforming use that had existed relating to the preexisting home unless any of the following apply:

a. A discontinuance is necessary for the safety of life or property.

b. The nonconforming use has been discontinued for the period of time established by ordinance, unless such discontinuance is caused by circumstances outside the control of the property owner. The period of time so established shall be not less than one year.

c. The replacement results in the overall nature and character of the present use being substantially or entirely different from the original lawful preexisting nonconforming use.

d. The replacement results in an obstruction to a shared driveway or shared sidewalk providing vehicular or pedestrian access to other homes and uses unless the property owner makes modifications to such shared driveway or sidewalk that extinguishes such obstruction or the effects of such obstruction.

The bill also amends Iowa Code § 414.1(1) (re: City Zoning) to add that, when there is a replacement of a preexisting

manufactured, modular, or mobile home with another manufactured, modular, or mobile home containing no more than the original number of dwelling units, or a replacement of a preexisting site-built dwelling unit with a manufactured, modular, or mobile home or site-built dwelling unit, within a manufactured home community or a mobile home park, the city shall not adopt or enforce any ordinance, regulation, or restriction that would prevent the continuance of the property owner's lawful nonconforming use that had existed relating to the preexisting home unless any of the following apply:

(1) A discontinuance is necessary for the safety of life or property.

(2) The nonconforming use has been discontinued for the period of time established by ordinance, unless such discontinuance is caused by circumstances outside the control of the property owner. The period of time so established shall be not less than one year.

(3) The replacement results in the overall nature and character of the present use being substantially or entirely different from the original lawful preexisting nonconforming use.

(4) The replacement results in an obstruction to a shared driveway or shared sidewalk providing vehicular or pedestrian access to other homes and uses unless the property owner makes modifications to such shared driveway or sidewalk that extinguishes such obstruction or the effects of such obstruction.

LEGISLATION

Iowa

Assistance animals

2019 IA S 341. Enacted 5/2/2019. Effective 7/1/2019.

This bill adds Iowa Code § 216.8B, Assistance animals and service animals in housing — penalty, to provide that:

"Assistance animal" means an animal that qualifies as a reasonable accommodation under the federal Fair Housing Act, 42 U.S.C. §3601 et seq., as amended, or section 504 of the federal Rehabilitation Act of 1973, 29 U.S.C. §794, as amended.

"Service animal" means a dog or miniature horse as set forth in the implementing regulations of Tit. II and Tit. III of the federal Americans with Disabilities Act of 1990, 42 U.S.C. §12101 et seq.

A landlord shall waive lease restrictions and additional payments normally required for pets on the keeping of animals for the assistance animal or service animal of a person with a disability.

A renter is liable for damage done to any dwelling by an assistance animal or service animal.

A person who knowingly denies or interferes with the right of a person with a disability under this section is, upon conviction, guilty of a simple misdemeanor.

The bill adds Iowa Code § 216.8C, Finding of disability and need for an assistance animal or service animal in housing, to provide that:

A licensee under chapter 148 (Medicine and Surgery and Osteopathic Medicine and Surgery), 148C (Physician Assistants), 152 (Nursing), 154B (Psychology), 154C (Social Work), or 154D (Behavioral Science) whose assistance is requested by a patient or client seeking a finding that an assistance animal or service animal as defined in section 216.8B, subsection 1, is a reasonable accommodation in housing shall make a written finding regarding whether the patient or client has a disability and, if a disability is found, a separate written finding regarding whether the need for an assistance animal or service animal is related to the disability.

The commission, in consultation with the consumer protection division of the office of the attorney general, shall adopt rules regarding the making of a written finding by licensees under this section. The rules shall include a form for licensees to document the licensees' written finding.

A landlord may deny a request for an exception to a pet policy if a person, who does not have a readily apparent disability, or a disability known to the landlord, fails to provide documentation indicating that the person has a disability and the person has a disability-related need for an assistance animal or service animal.

This section does not limit the means by which a person with a disability may demonstrate, pursuant to state or federal law, that the person has a disability or that the person has a disability-related need for an assistance animal or service animal.

The bill adds Iowa Code § 216C.1A to define: "Disability," "Service animal" and "Service-animal-in-training."

The bill amends Iowa Code § 216C.11, Service animals and service-animals-in-training — penalty (formerly, Service dogs and assistive animals), to provide that a person with a disability, a person assisting a person with a disability by controlling a service animal or a service-animal-in-training (formerly, a service dog or an assistive animal,) or a person training a service animal has the right to be accompanied by a service animal or service-animal-in-training, under control, in any of the places listed in sections 216C.3 and 216C.4 without being required to make additional payment for the service animal or service-animal-in-training. The person is liable for damage done to any premises or facility by a service animal or a service-animal-in-training.

The bill adds that a person who intentionally misrepresents an animal as a service animal or a service-animal-in-training is, upon conviction, guilty of a simple misdemeanor.

The bill adds Iowa Code § 216C.12, Immunity from liability for injury or damage caused by service animals and service-animals-in-training, to provide than an owner of real property, a contract for deed vendee, receiver, personal representative, trustee, lessor, lessee, agent, or other person directly or indirectly in control of the real property is not liable for any injury or damage caused by a service animal or service-animal-in-training if all of the following criteria are met:

a. The owner believes in good faith that the animal is a service animal or a service-animal-in-training and the person using the animal is a person with a disability, a person assisting a person with a disability by controlling a service animal or a service-animal-in-training, or a person training a service-animal-in-training.

b. The injury or damage is not caused by the owner's negligence, recklessness, or willful misconduct.

The bill adds Iowa Code § 717F.1 to provide that "Assistive animal" means a simian or other animal specially trained or in the process of being trained to assist a person with a disability.

The section of this Act enacting section 216.8C applies once rules are adopted. Prior to the adoption of the rules and creation of a licensee's written finding form, a renter seeking an assistance animal or a service animal as a reasonable accommodation in housing shall otherwise demonstrate pursuant to state or federal law that the person has a disability and that the person has a disability-related need for an assistance animal or service animal.

LEGISLATION

Kansas

Discrimination – Protected persons

2019 KS S 78. Enacted 4/22/2019. Effective from and after its publication in the statute book.

This bill provides that an applicant shall not be denied tenancy on the basis of, or as a direct result of, the fact that the applicant is a protected person if the applicant otherwise qualifies for tenancy in or occupancy of the premises.

An applicant, tenant or lessee qualifies for the protections under this section if the applicant, tenant or lessee is a protected person and provides a statement regarding

domestic violence, sexual assault, human trafficking or stalking to the landlord or property owner. If the landlord or property owner requests, the applicant, tenant or lessee shall provide documentation of the domestic violence, sexual assault, human trafficking or stalking, which may be in any of specified forms.

LEGISLATION
New York
Loans and grants

2019 NY S 1504. Enacted 4/12/2019. Effective immediately.

This bill allocates $5,000,000 for the purposes of a mobile and manufactured home advantage program to fund loans and grants for the acquisition, demolition, or replacement and/or repair of mobile or manufactured homes and/or mobile or manufactured home parks. No funds shall be expended from this appropriation until the director of the budget has approved a financial plan submitted by the administering agency in such detail as required by the director of the budget. Notwithstanding any other law to the contrary, the amounts appropriated herein may be sub-allocated or transferred to any state department, agency, or public authority for the purposes stated herein.

LEGISLATION
Oklahoma
Abandoned property

2019 OK H 2395. Enacted 4/15/2019. Effective 11/1/2019.

This bill amends Okla. Stat. tit. 41, § 130, under the Residential Landlord and Tenant Act, to modify disposition of abandoned personal property.

The bill provides that, if the tenant abandons or surrenders possession of the dwelling unit or has been lawfully removed from the premises through eviction proceedings and leaves household goods, furnishings, fixtures, or any other personal property in or around (adding, or around) the dwelling unit, the landlord may take possession of the property, and if, in the judgment of the landlord the property has an ascertainable or apparent value, the landlord shall provide written notice to the tenant by certified mail to the last-known address that if the property is not removed within the time specified in the notice, the property will be deemed abandoned.

LEGISLATION
Oklahoma
Termination - Notice

2019 OK H 2393. Enacted 4/22/2019. Effective 11/1/2019.

This bill amends Okla. Stat. tit. 41, § 111 to provide that the written notice required by the Oklahoma Residential Landlord and Tenant Act to terminate any tenancy, if posted, may be mailed to the tenant through the Firm Mailing Book for Accountable Mail as provided by the United States Post Office.

LEGISLATION
Oklahoma
Leases – Felony convictions

2019 OK H 2399. Enacted 4/29/2019. Effective immediately.

This bill adds Okla. Stat. tit. 41, § 201 to provide:

The owner of any real property, including any improvements consisting of dwelling units, acquired or improved in connection with an allocation of income tax credits pursuant to the provisions of Section 42 of the Internal Revenue Code of 1986, as amended, or in connection with an allocation of income tax credits

pursuant to the provisions of Section 2357.403 of Title 68 of the Oklahoma Statutes (Oklahoma Affordable Housing Act) shall have the right to impose conditions in any lease agreement for the occupancy of any dwelling located on real property as described by this section which allow the owner to accept or decline to enter into the lease agreement, or to terminate a previously executed lease agreement based upon the discovery of incomplete or false information, with respect to the prior felony conviction of any person identified as a tenant pursuant to the terms of the lease agreement, including occupants of the dwelling whether or not those occupants formally execute a lease agreement.

The owner of real property as described above may either accept or decline to enter into a lease agreement or to terminate a previously executed lease agreement based upon felony convictions, whether pursuant to federal law or the laws of any state or other governmental jurisdiction, for the following types of offenses:

1. Possession of any drug or chemical;

2. Possession of any drug or chemical with intent to manufacture or distribute;

3. Sex offenses, including but not limited to any form of sexual assault, rape, indecent exposure, or other sexually related offense if such offense was a felony;

4. Assault or battery or both if the offense was a felony;

5. Any felony involving violence against another person; and

6. Such other felony offenses as the owner of the real property as described in subsection A of this section includes in the terms of the lease agreement.

The provisions of this section shall supersede the administrative rule of any state agency, board, commission, department, statewide beneficiary public trust or other entity of state government to the extent of any conflict.

The provisions of this section shall be applicable with respect to lease transactions occurring on or after the effective date of this act without regard to the construction date of the improvements to real property.

LEGISLATION
Tennessee
Eviction - Service

2019 TN H 33. Enacted 4/18/2019. Effective immediately.

This bill amends Tenn. Code Ann. § 29-18-115 to add a private process server to the list of individuals authorized to personally serve a copy of a warrant or summons on behalf of a landlord in an action for forcible entry and detainer to regain possession of such landlord's real property.

LEGISLATION
Tennessee
Service animals

2019 TN H 1190. Enacted 4/30/2019. Effective 7/1/2019.

This bill adds a new sections to Tennessee Code Annotated, Title 66, Chapter 7 and Tennessee Code Annotated, Title 66, Chapter 28, Part 4 to define terms, including:

"Disability," "Health care," "Healthcare provider," "Reliable documentation," "Service animal" and "Support animal,"

The new sections also provide that a tenant or prospective tenant with a disability who requires the use of a service animal or support animal may request an exception to a landlord's policy that prohibits or limits animals or pets on the premises or that requires any payment by a tenant to have an animal or pet on the premises.

A landlord who receives a request from a tenant or prospective tenant may ask that the individual, whose

disability is not readily apparent or known to the landlord, submit reliable documentation of a disability and the disability-related need for a service animal or support animal. If the disability is readily apparent or known but the disability-related need for the service animal or support animal is not, then the landlord may ask the individual to submit reliable documentation of the disability-related need for a service animal or support animal.

A landlord who receives reliable documentation may verify the reliable documentation. However, nothing in this subsection authorizes a landlord to obtain confidential or protected medical records or confidential or protected medical information concerning a tenant's or prospective tenant's disability.

A landlord may deny a request if a tenant or prospective tenant fails to provide accurate, reliable documentation that meets the requirements, after the landlord requests the reliable documentation.

It is deemed to be material noncompliance and default by the tenant with the rental agreement, if the tenant:

(A) Misrepresents that there is a disability or disability-related need for the use of a service animal or support animal; or

(B) Provides documentation under subsection (c) that falsely states an animal is a service animal or support animal.

In the event of any violation, the landlord may terminate the tenancy and recover damages, including, but not limited to, reasonable attorney's fees.

Notwithstanding any other law to the contrary, a landlord is not liable for injuries by a person's service animal or support animal permitted on the premises as a reasonable accommodation to assist the person with a disability pursuant to the Fair Housing Act, as amended, (42 U.S.C. §§ 3601 et seq.);the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 et seq.);Section 504 of the Rehabilitation Act of 1973, as amended, (29 U.S.C. § 701);or any other federal, state, or local law.

The bill amends Tenn. Code Ann. § 66-28-505(f) to provide:

(1) It is deemed to be material noncompliance and default by the tenant with the rental agreement, if the tenant:

(A) Misrepresents that there is a disability or disability-related need for the use of a service animal or support animal; or

(B) Provides documentation that falsely states an animal is a service animal or support animal.

(2) As used in this subsection (f), "service animal" and "support animal" have the same meanings as the terms are defined in Section 5(a).

(3) In the event of any violation under subdivision (f)(1), the landlord may terminate the tenancy and recover damages, including, but not limited to, reasonable attorney's fees.

LEGISLATION

Washington

SCRA

2019 WA H 1138. Enacted 4/17/2019. Effective 7/22/2019 (projected).

This bill amends Wash. Rev. Code § 59.18.030 (under the Residential Landlord-Tenant Act) to add:

(31) "Active duty" means service authorized by the president of the United States, the secretary of defense, or the governor for a period of more than thirty consecutive days.

(32) "Orders" means written official military orders, or any written notification, certification, or verification from the service member's commanding officer, with respect to the service member's current or future military status.

(33) "Permanent change of station" means: (a) Transfer to a unit located at another port or duty station; (b) change in a unit's home port or permanent duty station; (c) call to active duty for a period not less than ninety days; (d) separation; or (e) retirement.

(34) "Service member" means an active member of the United States armed forces, a member of a military reserve component, or a member of the national guard who is either stationed in or a resident of Washington state.

The bill amends Wash. Rev. Code § 59.18.200 to provide that any tenant who is a member of the armed forces, including the national guard and armed forces reserves, or that tenant's spouse or dependent, may terminate a rental agreement with less than twenty days' written notice if the tenant receives permanent change of station (formerly, reassignment) or deployment orders that do not allow a twenty-day written notice (adding, written).

The bill amends Wash. Rev. Code § 59.20.030 (under the Manufactured/Mobile Home Landlord-Tenant Act) to provide that:

(21) "Active duty" means service authorized by the president of the United States, the secretary of defense, or the governor for a period of more than thirty consecutive days.

(22) "Orders" means written official military orders, or any written notification, certification, or verification from the service member's commanding officer, with respect to the service member's current or future military status;

(23) "Permanent change of station" means: (a) Transfer to a unit located at another port or duty station; (b) change of a unit's home port or permanent duty station; (c) call to active duty for a period not less than ninety days; (d) separation; or (e) retirement.

(24) "Service member" means an active member of the United States armed forces, a member of a military reserve component, or a member of the national guard who is either stationed in or a resident of Washington state.

The bill amends Wash. Rev. Code § 59.20.090 to provide that any tenant who is a member of the armed forces, including the national guard and armed forces reserves, or that tenant's spouse or dependent, may terminate a rental agreement with less than thirty days' notice if the tenant receives permanent change of station (formerly, reassignment) or deployment orders which do not allow greater notice. The service member (formerly, tenant) shall provide the landlord a copy of the official military orders or a signed letter from the service member's commanding officer confirming any of the following criteria are met:

(i) The service member is required, pursuant to permanent change of station orders, to move thirty-five miles or more from the location of the rental premises;

(ii) The service member is prematurely or involuntarily discharged or released from active duty;

(iii) The service member is released from active duty after having leased the rental premises while on active duty status and the rental premises is thirty-five miles or more from the service member's home of record prior to entering active duty;

(iv) After entering into a rental agreement, the commanding officer directs the service member to move into government provided housing;

(v) The service member receives temporary duty orders, temporary change of station orders, or state active duty orders to an area thirty-five miles or more from the location of the rental premises, provided such orders are for a period not less than ninety days; or

(vi) The service member has leased the property, but prior to taking possession of the rental premises, receives change of station orders to an area that is thirty-five miles or more from the location of the rental premises.

Formerly: The tenant shall provide notice of the reassignment or deployment order to the landlord no later than seven days after receipt.

LEGISLATION

Washington

Rent increase – Notice

2019 WA H 1440. Enacted 4/23/2019. Effective 8/27/2019 (projected).

This bill amends Wash. Rev. Code § 59.18.140 to add that a landlord shall provide a minimum of sixty days' prior written notice of an increase in the amount of rent to each affected tenant, and any increase in the amount of rent may not become effective prior to the completion of the term of the rental agreement.

If the rental agreement governs a subsidized tenancy where the amount of rent is based on the income of the tenant or circumstances specific to the subsidized household, a landlord shall provide a minimum of thirty days' prior written notice of an increase in the amount of rent to each affected tenant. An increase in the amount of rent may become effective upon completion of the term of the rental agreement or sooner upon mutual consent.

DEFAULT SERVICING

CASE LAW

Communications – Damages

CASE NAME: *Saccameno v. Ocwen Loan Servicing, LLC*
DATE: *03/11/2019*
CITATION: *2019 U.S. Dist. LEXIS 36245, United States District Court for the Northern District of Illinois, Eastern Division*

Shortly after Saccameno's bankruptcy discharge, an Ocwen employee coded the discharge as a dismissal and the loan was returned to Ocwen's foreclosure department. In addition, Ocwen's records incorrectly indicated that Saccameno had made only forty of the forty-two ongoing mortgage payments required under her Chapter 13 plan. Ocwen began sending letters to Saccameno stating that her account was delinquent.

Ocwen eventually corrected their records but continued to treat the account as delinquent.

Saccameno continued to make monthly mortgage payments until Ocwen began returning her checks because, according to its records, the payments were insufficient to cure her default.

Saccameno filed suit, asserting claims for breach of contract (Count I); violation of the FDCPA (Count II); violation of the Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA") (Count III); and violation of RESPA (Count IV).

The jury returned a verdict for Saccameno on all counts, awarding her $500,000 in compensatory damages on her breach of contract, RESPA, and FDCPA claims, and an additional $82,000 in compensatory damages and $3 million in punitive damages on her ICFA claim.

Ocwen renewed its motion for judgment as a matter of law, moved for a new trial based on purported evidentiary errors by the court and filed a motion seeking to amend the judgment, arguing that the jury's punitive damage award was excessive.

Because Saccameno presented sufficient evidence of a contractual breach by Ocwen, and of resulting pecuniary harm, the Court denied Ocwen's motion for judgment as a matter of law as to Saccameno's breach of contract claim.

Ocwen also argued that its communications could not be deemed "deceptive," pointing to the fine print at the bottom of its letters: “However, if the debt is in active bankruptcy or has been discharged through bankruptcy, this communication is not intended as and does not constitute an attempt to collect a debt.”

But Ocwen's argument failed to note Ocwen's oral communications. In addition, despite the disclaimer, Ocwen's conduct unquestionably indicated that it was attempting to collect a debt from Saccameno. Further, the ICFA does not require that the defendant intended to deceive; only that the defendant intended that the plaintiff rely on the deceptive act or statement.

Saccameno also presented sufficient evidence that Ocwen's conduct offended public policy and that Ocwen's conduct was "immoral, unethical, oppressive, or unscrupulous." Finally, there was sufficient evidence that Ocwen's conduct resulted in substantial injury.

As to the punitive damages, the Court found that Ocwen's conduct was sufficiently egregious and that there was sufficient evidence both that Ocwen's management was aware of its employees' actions and that Ocwen took a "position inconsistent with nonaffirmation" of those actions.

The Court also found that Ocwen failed both to conduct a sufficient investigation in response to Saccameno's QWRs and to provide an adequate explanation as to why Saccameno's account needed no correction.

Further, there was sufficient evidence that Saccameno suffered compensable RESPA damages and that a jury could reasonably have found that Saccameno's emotional distress (along with her attendant medication expenses and loss of employment) were the direct result of Ocwen's failure properly to respond to her requests that her account be corrected.

The Court found that the consent orders admitted into evidence here were highly probative with respect to key issues in this case. This was especially true with regard to Ocwen's prior awareness of concerns regarding its handling of distressed loans. The Court denied Ocwen's motion for a new trial.

The Court also denied the motion to amend the judgment, finding that the reprehensibility of Ocwen's conduct did not suggest that the punitive damage award in this case was excessive.

Further, the conduct underlying the claims was interrelated and the resulting harm had a cumulative effect. The relevant comparison, therefore, was between $3 million in punitive damages and $582,000 in compensatory damages. The resulting ratio of approximately 5:1 was well within the single-digit range suggested by the Supreme Court.

Nor was the punitive damage award in this case unconstitutionally excessive.

The court denied Ocwen's motions.

LEGISLATION

New York

Foreclosure – Notice - Conferences

2019 NY S 1505. Enacted 4/12/2019. Effective immediately.

This bill amends N.Y. Real Prop. Acts. Law § 507, to make permanent provisions relating to notice of foreclosure and mandatory settlement conferences in residential foreclosure actions.

LEGISLATION

Oklahoma

Forced sales - Appraisals

2019 OK S 346. Enacted 4/23/2019. Effective 11/1/2019.

This bill amends Okla. Stat. tit. 12, § 759, relating to property subject to judgment lien and forced sale to modify procedure for appraisal of property. The bill requires a written affidavit of impartiality and that appraisals be based on current market value.

The amended statute provides that:

If a general or special execution is levied upon lands and tenements, the sheriff shall endorse on the face of the writ the legal description and shall have three disinterested persons who have taken an oath to impartially appraise the property levied on or a legal entity which has provided a written affidavit of impartiality (adding, or a legal entity which has provided a written affidavit of impartiality), upon actual view; and the disinterested persons or legal entity shall return to the officer a signed estimate of the real value of the property. (Adds:) If an estimate is obtained from a disinterested legal entity, such estimate shall be developed by the legal entity using at least three independent, credible sources, each of which has estimated the real value of the subject property independently.

The disinterested persons or legal entity (adding, or legal entity) shall be paid for such services by the court clerk of the county where the property is located within thirty (30) days of the date that they return their estimate of the real value of the property.

INSTALLATION

LEGISLATION
Oklahoma
Inspection fees

2019 OK S 716. Enacted 4/29/2019. Effective 11/1/2019.

This bill amends Okla. Stat. tit. 47, § 583 to add that the schedule of license fees to be charged and received by the Commission for the licenses issued hereunder shall be as follows:

9. Any manufactured home manufacturer who sells a new manufactured home to be shipped to or sited in the State of Oklahoma shall pay an installation inspection fee of Seventy-five Dollars ($75.00) for each new single-wide manufactured home and One Hundred Twenty-five Dollars ($125.00) for each new multi-floor manufactured home; and

10. A used manufactured home inspection fee of Seventy-five Dollars ($75.00) shall be paid by the installer at or before the time of installation of any used manufactured home sited and installed in the State of Oklahoma.

LEGISLATION
Washington
Inspections

2019 WA H 1486. Enacted 4/29/2019. Effective 8/27/2019.

This bill relates to the delegation of inspection duties for factory built housing and commercial structures.

The bill amends Wash. Rev. Code § 43.22.470 to provide that the department of labor and industries shall have the authority to delegate all or part of its duties of inspection to a local enforcement agency or a qualified inspection agency (adding, or a qualified inspection agency).

(Adds:) Qualified inspection agencies shall be objective, competent, and independent from the companies responsible for the work being inspected. The qualified inspection agency will disclose to the department any conflict of interest so that objectivity may be confirmed. Qualified inspection agencies shall have adequate equipment to perform the required inspections and shall employ experienced personnel with appropriate certifications and knowledge for the inspections being performed. Certification by the international code council will be recognized as meeting this last requirement.

The bill also amends Wash. Rev. Code § 43.22.450 by adding:

(8) "Qualified inspection agency" means a nongovernmental entity approved to perform inspections under contract for the department.

LENDING

CASE LAW

QM – Ability to repay

CASE NAME: *Elliott v. First Fed. Cmty. Bank of Bucyrus*
DATE: *03/26/2019*
CITATION: *2019 U.S. Dist. LEXIS 50405, United States District Court for the Southern District of Ohio, Eastern Division*

Plaintiff brought this suit alleging a violation of the Truth in Lending Act (TILA), 15 U.S.C. § 1639c, § 1640, and common law negligence.

Plaintiff argued that the Bank failed to make a "reasonable and good faith determination based on verified and documented information" that he had a "reasonable ability to repay the loan" but the Court found no genuine dispute that the Bank did just this. Bradley Murtiff was the Bank's Vice President in 2014 when Plaintiff was refinancing his loan. Mr. Murtiff averred that he was "not aware of any information/documents that were available that the bank has not obtained." The record in this case indicates the Bank did its due diligence to confirm Plaintiff would have the ability to make the payments on his mortgage. At the time of refinancing, Plaintiff was a good customer who had not missed a payment, and the data the Bank had indicated he was a customer with the financial standing to allow for the refinancing. The fact that Plaintiff and his ex-wife did not keep a separation agreement by which Plaintiff would receive $2,200 per month spousal support and instead opted to divorce — a series of events which reduced Plaintiff's income by an order of magnitude — was not an event that was reasonably foreseeable to the Bank.

Plaintiff may have been unable to make his payments but it was not the responsibility of the Bank, which met its statutory obligations.

Defendant's motion for summary judgment granted.

LEGISLATION

Iowa

Interest rates – Additional charges

2019 IA H 260. Enacted 4/15/2019. Effective 7/1/2019.

This bill amends Iowa Code § 536.13 to provide:

a. The superintendent may establish the maximum rate of interest or charges as permitted under this chapter for those loans with an unpaid principal balance of thirty (formerly, ten) thousand dollars or less. For those loans with an unpaid principal balance of over thirty (formerly, ten) thousand dollars, the maximum rate of interest or charges which a licensee may charge shall be the greater of the rate permitted by chapter 535 or the rate authorized for supervised financial organizations by chapter 537.

The bill adds a new paragraph to Iowa Code § 537.2501 to provide that, in addition to the finance charge permitted by parts 2 and 4, a creditor may contract for and receive the following additional charges:

For an interest-bearing consumer credit transaction, a service charge in an amount not to exceed the lesser of ten percent of the amount financed or thirty dollars.

The bill amends Iowa Code § 537.2510 to provide:

a. If the prepayment is in full, the creditor may collect or retain a minimum charge not exceeding five dollars in a transaction which had an amount financed of seventy-five dollars or less, or not exceeding seven dollars and fifty cents in a transaction which had an amount financed of more than seventy-five dollars, if the minimum charge was contracted for, and the finance charge earned at the time of prepayment is less than the minimum charge contracted for. (Adds:) If, however, a creditor has collected a service charge in association with an interest-bearing consumer credit transaction pursuant to section 537.2501, subsection 1, paragraph "l", the creditor shall

not collect or retain a minimum charge upon prepayment pursuant to this subsection.

The bill also adds that this section does not apply to a service charge collected pursuant to section 537.2501, subsection 1, paragraph "l".

LEGISLATION
Oklahoma
Home buyer savings accounts

2019 OK S 961. Enacted 4/26/2019. Effective 1/1/2020.

This bill creates the Oklahoma Home Buyer Savings Account Act, Okla. Stat. tit. 46, §§ 311 – 318.

After the effective date of this act, any individual may open an account with a financial institution and designate the account, in its entirety, as a home buyer savings account to be used to pay or reimburse a qualified beneficiary's eligible costs for the purchase of a single-family residence in this state.

Except as otherwise provided in and subject to the limitations under this act, there shall be deducted from taxable income of an account holder for Oklahoma income tax purposes the amount contributed to a home buyer savings account during each tax year, subject to the limitations of subsection B of this section, not to exceed Five Thousand Dollars ($5,000.00) for an account holder who files an individual tax return or Ten Thousand Dollars ($10,000.00) for joint account holders who file a joint tax return.

LICENSING

LEGISLATION
Georgia
Mortgage brokers

2019 GA H 212. Enacted 4/18/2019. Effective 7/1/2019.

This bill amends the definition of "mortgage broker" in Ga. Code Ann. § 7-1-1000 to provide:

"(19)(A) 'Mortgage broker' means any person who directly or indirectly solicits, processes, places, or negotiates mortgage loans for others, ; or offers to solicit, process, place, or negotiate mortgage loans for others; or closes mortgage loans which may be in the mortgage broker's own name with funds provided by others, and which loans are assigned to the mortgage lenders providing the funding of such loans within 24 hours of the funding.

(B) The term does not include a retailer or retail broker of a manufactured or mobile home as defined in Code Section 8-2-131 or a residential industrialized building as defined in Code Section 8-2-111:

(i) Whose residential mortgage loan activities are limited to compiling and transmitting residential mortgage loan applications along with related supporting documentation to mortgage lenders who are licensed or exempt from the licensing provisions of this article or communicating with residential mortgage loan applicants as necessary to obtain additional documents that complete the residential mortgage loan application to those licensed or exempt mortgage lenders; and

(ii) Who does not receive any payment or fee from any person for assisting the applicant to apply for or obtain financing to purchase the manufactured home, mobile home, or residential industrialized building.

(C) The term does not include an employee of a retailer or retail broker of a manufactured or mobile home as defined in Code Section 8-2-131 or a residential industrialized building as defined in Code Section 8-2-111 who:

(i) Satisfies the requirements set forth in paragraph (B) of this paragraph;

(ii) Is acting within the scope of employment and under the supervision of the retailer or retail broker as an employee and not as an independent contractor;

(iii) Is employed by only one such retailer or retail broker and shall be at all times eligible for employment in compliance with the provisions and prohibitions of Code Section 7-1-1004;

(iv) Has not been issued a cease and desist order in the past five years if such order was based on a violation of Code Section 7-1-1002 or 7-1-1013; and

(v) Has not had a mortgage lender, mortgage broker, or mortgage loan originator license revoked within the past five years."

LEGISLATION

Iowa
towable recreational vehicles - Dealers

2019 IA S 435. Enacted 5/3/2019. Effective 7/1/2019.

This bill amends Iowa Code § 321.1(36C)(b) to provide that, if a travel trailer is used in the state as a place of human habitation for more than one hundred eighty (formerly, 90) consecutive days in one location it shall be classed as a manufactured or mobile home regardless of size limitations.

The bill amends Iowa Code § 322C.2 to provide that to sell "at retail" means to sell a towable recreational vehicle (formerly, travel trailer) to a person who will devote it to a consumer use.

The bill adds:

"Community" means a towable recreational vehicle dealer's area of responsibility as stipulated in the manufacturer-dealer agreement.

"Manufacturer-dealer agreement" means a written agreement or contract entered into between a manufacturer or distributor and a towable recreational vehicle dealer that specifies the rights and responsibilities of the parties and authorizes the dealer to sell and service new towable recreational vehicles.

"Park model recreational vehicle" means a vehicle meeting all of the following criteria:

a. The vehicle is designed to provide, and marketed as providing, temporary living quarters for recreational, camping, travel, or seasonal use.

b. The vehicle is not permanently affixed to real property for use as a permanent dwelling.

c. The vehicle is built on a single chassis mounted on wheels with a gross trailer area not exceeding four hundred square feet in the vehicle's set-up mode.

d. The vehicle is certified by the manufacturer as in compliance with the American national standard for park model recreational vehicles, commonly cited as "ANSI A 119.5".

"Towable recreational vehicle" means a vehicle designed to be towed by a motor vehicle owned by a consumer and to provide temporary living quarters for recreational, camping, or travel use, that complies with all applicable federal regulations, and that is certified by the vehicle's manufacturer as in compliance with the national fire protection association standard on recreational vehicles, commonly cited as "NFPA 1192", or the American national standard for park model recreational vehicles, commonly cited as "ANSI A 119.5", as applicable. "Towable recreational vehicle" includes a travel trailer, toy-hauler travel trailer, fifth-wheel travel trailer, toy-hauler fifth-wheel travel trailer, folding camping trailer, truck camper, and park model recreational vehicle. For purposes of registration and titling under chapter 321, a towable recreational vehicle shall be considered a travel trailer or fifth-wheel travel trailer, as those terms are defined in section 321.1, as applicable.

The bill amends Iowa Code § 322C.3, Prohibited acts — exception, to provide that:

1. A person shall not engage in this state in the business of selling at retail new towable recreational vehicles (formerly, travel trailers) of any line-make (formerly, make), or represent or advertise that the person is engaged in or intends to engage in such business in this

state, unless the person is authorized by a manufacturer-dealer agreement (Formerly, contract in writing) between that person and the manufacturer or distributor of that line-make of new towable recreational vehicles to sell the vehicles (formerly, trailers) in this state, and unless the department has issued to the person a license as a towable recreational vehicle dealer for the same line-make of towable recreational vehicle which the dealer is authorized to sell under the manufacturer-dealer agreement (formerly, travel trailer).

The bill makes confirming amendments, replacing "travel trailer" with "towable recreational vehicle."

The bill also adds Iowa Code §§ 322C.13, Manufacturer-dealer agreement required — community; 322C.14, Manufacturer-dealer agreement — termination, cancellation, nonrenewal, or alteration by manufacturer or distributor; 322C.15, Manufacturer-dealer agreement — termination, cancellation, nonrenewal, or alteration by dealer; 322C.16, Repurchase or sale of inventory; 322C.17, Transfer of ownership — family succession — objection; 322C.18 Warranty obligations; 322C.19, Indemnification — warrantor and dealer; 322C.20. Inspection and rejection by dealer; 322C.21, Civil action — mediation.

The bill amends Iowa Code § 435.23 to provide that the manufacturer's and retailer's inventory of mobile homes, manufactured homes, or modular homes not in use as a place of human habitation shall be exempt from the annual tax. All travel trailers, fifth-wheel travel trailers, and towable recreational vehicles (adding, fifth-wheel travel trailers, and towable recreational vehicles) shall be exempt from this tax. The homes, travel trailers, fifth-wheel travel trailers, and towable recreational vehicles in the inventory of manufacturers and retailers shall be exempt from personal property tax.

This Act applies to manufacturer-dealer agreements pertaining to the sale of new towable recreational vehicles entered into or renewed on or after January 1, 2020.

REGULATORY ALERT
Maryland
Mortgage lenders

Issued 4/26/2019

MOBILE HOME LOANS: LICENSING AND REPORTING.

Pursuant to the Maryland Mortgage Lender Law ("MMLL"), a mortgage loan is defined as "any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or residential real estate on which a dwelling is constructed or intended to be constructed" (see Md. Code Ann., Fin. Inst. §11-501(l)). Pursuant to FI §11-501(c)(1), dwelling has the meaning stated in 15 U.S.C. §1062(w), i.e., "…a residential structure or mobile home which contains one to four family housing units, or individual units of condominiums or cooperatives." Non-owner occupied mobile homes are exempt from the definition of mortgage loan (see FI §11-501(c)(2)).

Therefore, a loan secured by an owner-occupied mobile home is a mortgage loan under Maryland law, and a person may not make a mortgage loan in Maryland unless the person is licensed as a mortgage lender or is otherwise exempt from licensing (see FI §11-504).

Pursuant to FI §11-513.1, all mortgage lender licensees must submit a quarterly mortgage call report to the Commissioner through NMLS, in the form, and containing the information, that NMLS requires. Accordingly, all mortgage lender licensees must report all lending activity involving mobile homes in their NMLS quarterly call reports. Note: the Property Type section of the NMLS call report specifically includes "Manufactured Housing" in line AC210.

(Note: this is not a change in law, just a reminder to industry)

LEGISLATION
Maryland
Mortgage licensees

2019 MD H 61. Enacted 4/18/2019. Effective 10/1/2019.

(New material in CAPS)

This bill amends Md. Code Ann., Fin. Inst. § 1-101 to provide that, in the case of an applicant THAT APPLIES TO ACT AS A MORTGAGE BROKER or A licensee that (deleting, does not lend money secured by a dwelling or residential real estate) ACTS AS A MORTGAGE BROKER, in the amount of $25,000;

(2) IN THE CASE OF AN APPLICANT THAT APPLIES TO ACT AS A MORTGAGE LOAN SERVICER THAT OPERATES AS AN APPROVED SERVICER FOR A GOVERNMENT-SPONSORED ENTERPRISE (GSE) OR A LICENSEE THAT ACTS AS A MORTGAGE SERVICER AND OPERATES AS AN APPROVED SERVICER FOR A GSE, IN THE LARGEST AMOUNT REQUIRED OF THE APPLICANT OR LICENSEE BY THE STANDARDS OF THE GSE;

(3) IN THE CASE OF AN APPLICANT THAT APPLIES TO ACT AS A MORTGAGE SERVICER THAT DOES NOT OPERATE AS AN APPROVED SERVICER FOR A GSE OR A LICENSEE THAT ACTS AS A MORTGAGE SERVICER THAT DOES NOT OPERATE AS AN APPROVED SERVICER FOR A GSE:

(I) $100,000, IF THE UNPAID PRINCIPAL BALANCE OF THE ENTIRE SERVICING PORTFOLIO IS LESS THAN OR EQUAL TO $50,000,000;

(II) $250,000, IF THE UNPAID PRINCIPAL OF THE ENTIRE SERVICING PORTFOLIO IS GREATER THAN $50,000,000 BUT LESS THAN OR EQUAL TO $100,000,000;

(III) $500,000, IF THE UNPAID PRINCIPAL BALANCE OF THE ENTIRE SERVICING PORTFOLIO IS GREATER THAN $100,000,000 BUT LESS THAN OR EQUAL TO $250,000,000; OR

(IV) $1,000,000, IF THE UNPAID PRINCIPAL BALANCE OF THE ENTIRE SERVICING PORTFOLIO IS GREATER THAN $250,000,000; AND

(4) In the case of an applicant THAT APPLIES TO LEND MONEY SECURED BY A DWELLING OR RESIDENTIAL REAL ESTATE or A licensee that lends money secured by a dwelling or residential real estate, in the amount of:

(i) $25,000, if the applicant or licensee, in the 12 months prior to the license application or the renewal application, lent in the aggregate not more than $1,000,000 secured by a dwelling or residential real estate;

(ii) $50,000, if the applicant or licensee, in the 12 months prior to the license application or the renewal application, lent in the aggregate more than $1,000,000, but not more than $5,000,000 secured by a dwelling or residential real estate;

(iii) $100,000, if the applicant or licensee, in the 12 months prior to the license application or the renewal application, lent in the aggregate more than $5,000,000, but not more than $10,000,000 secured by a dwelling or residential real estate; and

(iv) $250,000, if the applicant or licensee, in the 12 months prior to the license application or the renewal application, lent in the aggregate more than $10,000,000 secured by a dwelling or residential real estate.

(b) (1) Subject to paragraphs (2), (3) , AND (4) of this subsection, the minimum net worth requirements under subsection (A) of this section may be satisfied by the applicant or licensee having:

(i) Cash on deposit with a bank or depository institution;

(ii) A WORKING CAPITAL line of credit from a bank or depository institution;

(III) AN IRREVOCABLE LETTER OF CREDIT FROM A BANK OR DEPOSITORY INSTITUTION;

(IV) Other assets; or

(V) A combination of cash, a WORKING CAPITAL line of credit, AN IRREVOCABLE LETTER OF CREDIT, or other assets.

(3) (i) If a WORKING CAPITAL line of credit is used toward satisfying the minimum net worth requirements under subsection (A) of this section, the applicant or licensee shall submit to the Commissioner a copy of the line of credit agreement and the promissory note , AND, SUBJECT TO SUBPARAGRAPHS (II) AND (III) OF THIS PARAGRAPH, A RESERVATION OF THE WORKING CAPITAL LINE OF CREDIT IN FAVOR OF THE COMMISSIONER BY THE BANK OR DEPOSITORY INSTITUTION.

(ii) A WORKING CAPITAL line of credit may not be used toward satisfying more than 75% of the minimum net worth requirements under subsection (A) of this section.

(III) A WORKING CAPITAL LINE OF CREDIT MAY NOT BE USED TOWARD SATISFYING THE MINIMUM NET WORTH REQUIREMENTS UNDER SUBSECTION (A)(2) AND (3) OF THIS SECTION.

(4) (I) IF AN IRREVOCABLE LETTER OF CREDIT IS USED TOWARD SATISFYING THE MINIMUM NET WORTH REQUIREMENTS UNDER SUBSECTION (A) OF THIS SECTION, THE APPLICANT OR LICENSEE SHALL SUBMIT TO THE COMMISSIONER THE ORIGINAL IRREVOCABLE LETTER OF CREDIT.

(II) AN IRREVOCABLE LETTER OF CREDIT MAY NOT:

1. TERMINATE PRIOR TO THE EXPIRATION OF A LICENSE; OR

2. BE MODIFIED OR REVOKED WITHOUT THE PRIOR WRITTEN CONSENT OF THE COMMISSIONER.

The bill amends Md. Code Ann., Fin. Inst. § 11-512 to provide:

(c) In addition to any sanctions which may be imposed under this subtitle by the Commissioner, a licensee who fails to provide IN A TIMELY MANNER the notice required under subsection (a)(1) or (b)(1) of this section shall:

(1) For each such failure pay to the Commissioner a surcharge in the amount of $500; and

(2) FOR A LICENSEE WHO FAILS TO PROVIDE IN A TIMELY MANNER THE NOTICE REQUIRED UNDER SUBSECTION (B)(1) OF THIS SECTION, FILE with the Commissioner an application for a new license, together with all applicable application and investigation fees.

The bill amends Md. Code Ann., Fin. Inst. § 11-513 to provide:

(c) Notwithstanding subsection (a) of this section, on approval of the Commissioner, a licensee need not keep at the licensee's place of business any books and records otherwise required by the Commissioner under subsection (a) of this section if the licensee:

(2) Retains the records for at least 61 (formerly, 25) months in a storage facility disclosed to the Commissioner.

Md. Code Ann., Fin. Inst. § 11-515 has been amended to provide that each licensee shall be examined at least once during any 60-MONTH (formerly, 36-month) period.

The bill amends Md. Code Ann., Fin. Inst. § 11-609 to provide:

(a) Subject to any regulations the Commissioner adopts in connection with the transition to NMLS, an initial license term shall:

(1) (deletes, Be for a maximum period of 1 year;)

Begin on the first day the license is issued; and

(2) Expire on December 31 of the year (deleting, the license is issued):

(I) IN WHICH THE LICENSE IS ISSUED, IF THE LICENSE IS ISSUED BEFORE NOVEMBER 1; OR

(II) SUCCEEDING THE YEAR IN WHICH THE LICENSE IS ISSUED, IF THE LICENSE IS ISSUED ON OR AFTER NOVEMBER 1.

(b) On or AFTER (formerly, before) November 1 of the year IN WHICH THE LICENSE EXPIRES, THE LICENSE may be

renewed FOR AN ADDITIONAL 1- YEAR TERM, if the licensee:

(1) Subject to subsections (D) and (E) of this section, meets the minimum standards for the issuance of a license and otherwise is entitled to be licensed;

(2) Pays to the Commissioner a renewal fee set by the Commissioner; and

(3) Submits to the Commissioner:

(i) A renewal application on the form that the Commissioner requires; and

(ii) Satisfactory evidence of compliance with any continuing education requirements under this subtitle or set by regulations adopted by the Commissioner.

(Deletes, (c) Subject to any regulations the Commissioner adopts in connection with the transition to the Nationwide Mortgage Licensing System and Registry, a renewal term shall:

(1) Be for a maximum period of 1 year;

(2) Begin on January 1 of each year after the initial term; and

(3) Expire on December 31 of the year the renewal term begins.)

LEGISLATION
Oklahoma
Salespersons

2019 OK H 1094. Enacted 4/18/2019. Effective 11/1/2019.

This bill amends Okla. Stat. tit. 47, §§ 564, 565, 581, 582, 583 and 584, deleting the requirement for manufactured homes salesperson licenses.

PRESS RELEASE
CFPB
CIDs

Issued 4/23/2019.

The Consumer Financial Protection Bureau announced changes to policies regarding Civil Investigative Demands (CIDs) to ensure they provide more information about the potentially wrongful conduct under investigation.

Consistent with the updated policy, CIDs will provide more information about the potentially applicable provisions of law that may have been violated. CIDs will also typically specify the business activities subject to the Bureau's authority. In investigations where determining the extent of the Bureau's authority over the relevant activity is one of the significant purposes of the investigation, staff may specifically include that issue in the CID in the interests of further transparency.

SALES AND WARRANTIES

LEGISLATION
Colorado
Certification - Insignia

2019 CO H 1238. Enacted 4/25/2019. Effective 8/1/2019.

This bill amends Colo. Rev. Stat. § 24-32-3307, Noncompliance with standards, to provide that: (1) The state director of housing may obtain injunctive relief from the appropriate court to enjoin the manufacture, (deleting, substantial repair or alteration,) sale, delivery, or installation of factory-built housing by filing an affidavit specifying the manner in which the housing does not conform to the requirements of this part 33 or to rules promulgated pursuant to section 24-32-3305. The director or the director's designee may suspend the issuance of insignias of approval while injunctive relief is being sought.

The bill makes the same amendment in Colo. Rev. Stat. § 24-32-3311, Certification of factory-built residential and nonresidential structures, (1) (a) Factory-built structures manufactured, (deleting, substantially altered or repaired,) sold, or offered for sale within this state after the effective date of the rules promulgated pursuant to this part 33 shall bear an insignia of approval issued by the division and affixed by the division or an authorized quality assurance representative.

The bill adds:

(a.5) FACTORY-BUILT STRUCTURES MANUFACTURED OR SOLD FOR TRANSPORTATION TO AND INSTALLATION IN ANOTHER STATE NEED NOT BEAR AN INSIGNIA OF APPROVAL ISSUED BY THE DIVISION.

LEGISLATION
Mississippi
Telephone solicitation – Texts

This bill amends the State Telephone Solicitation Act; expands the definition of telephone solicitation to include text message communications and the solicitations of a charitable contribution; increases the civil penalties for violations of the Act; removes the repealer on the Act.

The bill amends Miss. Code Ann. § 77-3-705 to provide that:

"Consumer" means* * * a person or business that receives a telephone call or text message from a telephone solicitor.

"Telephone solicitation" means any voice or text message (adding, or text message) communication over the telephone line or cellular network (adding, or cellular network) of a consumer for the purpose of:

(i) Encouraging the purchase or rental of, or investment in, property;* * *

(ii) Soliciting a sale of any consumer goods or services, or an extension of credit for consumer goods or services* * * ;

(New) (iii) Soliciting any other item of value, pecuniary or otherwise, regardless of whether a sales presentation is made; or

(New) (iv) Soliciting a charitable contribution of money or property.

The bill adds: "Sales presentation" means attempting to obtain something of value, pecuniary or otherwise, regardless of whether consideration is or is expected to be exchanged.

Miss. Code Ann. § 77-3-711 has been amended to provide that the provisions of this article shall not apply to:

(ii) Without the intent to complete or obtain provisional acceptance of a sale, a charitable contribution, or the payment of some other item of value, pecuniary or otherwise (adding, a charitable contribution, or the payment of some other item of value, pecuniary or otherwise), during the telephone solicitation.

The bill amends Miss. Code Ann. § 77-3-725 to increase penalties from $5,000 to $10,000.

LEGISLATION
New Mexico
Unfair trade practices – Gender identity

2019 NM S 25. Enacted 4/3/2019. Effective 6/14/2019.

This bill amends NM Stat. Ann. § 57-12-2 to add that an "unfair or deceptive trade practice" includes:

(19) offering or providing unposted or unadvertised pricing or service based on the buyer's gender or perceived gender identity; provided, however, that this provision does not apply to persons regulated by the office of superintendent of insurance pursuant to the New Mexico Insurance Code.

TAXES

LEGISLATION
Montana
Exemptions – Abandoned homes

2019 MT S 165. Enacted 5/1/2019. Effective 10/1/2019.

This bill amends Mont. Code Ann. § 15-6-219, Personal and other property exemptions, to add that a housetrailer, manufactured home, or mobile home that receives an exemption from the department based on abandonment is exempt from taxation.

The bill adds a new section to Title 15, chapter 6, part 2, to provide:

Exemption -- abandoned housetrailer, manufactured home, or mobile home. (1) There is a property tax exemption for movable housing that is uninhabited because it is no longer fit for human habitation.

If the movable housing has a productive use other than human habitation, the department shall assess a value to the property based on the productive use.

After an exemption is approved, the applicant remains eligible for the exemption as long as the property continues to satisfy the provisions of this section.

"Movable housing" means a housetrailer, manufactured home, or mobile home that is not treated as an improvement to real property as defined in 15-1-101.

"Productive use" means used for livestock or storage of personal property.

The act applies to property tax years beginning after December 31, 2019.

TITLING AND PERFECTION

LEGISLATION
Montana
Certificate of title - Notary

2019 MT H 624. Enacted 4/18/2019. Effective 7/1/2019.

This bill amends Mont. Code Ann. § 61-3-220 to restrict the requirement that vehicle titles be notarized to private party transactions.

LEGISLATION
Montana
Property records

2019 MT S 200. Enacted 5/2/2019. Effective 10/1/2019.

This bill adds a new section to Mont. Code Ann., Title 15, chapter 1, part 1, to provide:

Classification of mobile home, manufactured home, or housetrailer -- property records. A mobile home, manufactured home, or housetrailer that is considered an improvement as defined in 15-1-101 may not be identified as a mobile home in state and local property databases or through the internet unless the distinction is required for property valuation or property tax billing purposes.

LEGISLATION
Nebraska
Application for certificate of title

2019 NE L 270. Enacted 4/17/2019. Effective 9/7/2019.

This bill amends Neb. Rev. Stat. § 60-144 to provide:

(ii) This subdivision applies beginning on an implementation date designated by the director. The director shall designate an implementation date which is on or before January 1, 2021 (formerly, 2020). In addition

to the information required under subdivision (1)(a)(i) of this section, the application for a certificate of title shall contain (A)(I) the full legal name as defined in section 60-468.01 of each owner or (new) (II) the name of each owner as such name appears on the owner's motor vehicle operator's license or state identification card and (B)(I) the motor vehicle operator's license number or state identification card number of each owner, if applicable, and one or more of the identification elements as listed in section 60-484 of each owner, if applicable, and (II) if any owner is a business entity, a nonprofit organization, an estate, a trust, or a church-controlled organization, its tax identification number.

The bill amends Neb. Rev. Stat. § 60-149 to provide that:

(2)(a) If the application for a certificate of title for a manufactured home or a mobile home is being made in accordance with subdivision (4)(b) of section 60-137 or if the certificate of title for a manufactured home or a mobile home is unavailable (deleting, pursuant to section 52-1801,) the application shall be accompanied by proof of ownership in a specified form.

The bill amends Neb. Rev. Stat. § 60-151 by adding:

(2) This subsection applies beginning on an implementation date designated by the director. The director shall designate an implementation date which is on or before January 1, 2021. If the purchaser of a vehicle does not obtain a certificate of title in accordance with subsection (1) of this section within thirty days after the sale of the vehicle, the seller of such vehicle may request the department to update the electronic certificate of title record. The department shall update such record upon receiving evidence of a sale satisfactory to the director.

Neb. Rev. Stat. § 60-386 is similarly amended to provide:

(2) This subsection applies beginning on an implementation date designated by the director. The director shall designate an implementation date which is on or before January 1, 2021 (formerly, 2020). In addition to the information required under subsection (1) of this section, the application for registration shall contain (a)(i) the full legal name as defined in section 60-468.01 of each owner or (new) (ii) the name of each owner as such name appears on the owner's motor vehicle operator's license or state identification card and (b)(i) the motor vehicle operator's license number or state identification card number of each owner, if applicable, and one or more of the identification elements as listed in section 60-484 of each owner, if applicable, and (ii) if any owner is a business entity, a nonprofit organization, an estate, a trust, or a church-controlled organization, its tax identification number.

LEGISLATION

Washington

Certificate of title - Distraint

2019 WA S 5131. Enacted 4/19/2019. Effective 7/22/2019 (projected).

This bill amends Wash. Rev. Code § 46.12.700 to add that, when a manufactured/mobile or park model home is sold at a county treasurer's foreclosure or distraint sale, the registered owner of record, legal owner on title, and the purchaser are not required to sign the certificate of title and title application to transfer title. Any lienholder interest in a manufactured/mobile or park model home is extinguished by the county treasurer's foreclosure or distraint sale, provided that such lienholder has been provided a copy of the notice of the sale at his or her last known address, by registered letter, at least thirty days prior to the date of sale.

The bill also amends Wash. Rev. Code § 84.56.070 to provide that in the event that the treasurer is unable to collect the taxes when due under this section, the treasurer must prepare papers in distraint. The papers must contain a description of the personal property, the amount of taxes including any amounts deferred under chapters 84.37 and 84.38 RCW that are a lien on the personal property to be distrained (adding, including any amounts deferred under chapters 84.37 and 84.38 RCW

that are a lien on the personal property to be distrained), the amount of the accrued interest at the rate provided by law from the date of delinquency, and the name of the owner or reputed owner.

The bill also provides that if the taxes for which the property is distrained, and the interest and costs accruing thereon, are not paid before the date appointed for the sale, which may not be less than ten days after the taking of the property, the treasurer or treasurer's designee must proceed to sell the property at public auction, or so much thereof as is sufficient to pay the taxes and any amounts deferred under chapters 84.37 and 84.38 RCW that are a lien on the property to be sold (adding, taxes and any amounts deferred under chapters 84.37 and 84.38 RCW that are a lien on the property to be sold), with interest and costs. If there is any excess of money arising from the sale of any personal property, the treasurer must pay the excess less any cost of the auction to the owner of the property so sold or to his or her legal representative.

TRANSPORT

LEGISLATION
Oklahoma
Length restrictions

2019 OK H 1217. Enacted 4/25/2019. Effective 11/1/2019.

This bill amends Okla. Stat. tit. 47, § 14-103A to provide:

A. No combination of a motor vehicle and manufactured home or frame or frames thereof shall have an overall length, inclusive of front and rear bumpers, in excess of seventy (70) feet or a width in excess of eighteen (18) (formerly, 16) feet while operating on the system of interstate and defense highways. In determining the width of a manufactured home, the overall (formerly, topside) width shall not exceed the eighteen-foot width limit (formerly, the topside width may exceed the sixteen-foot width limit by no more than twelve (12) inches on each side for awnings, doorknobs, or other fixtures extending beyond the body of the unit). Such combination exceeding seventy (70) feet in length or eight and one-half (8 1/2) feet in width must comply with the provisions of Section 14-118 of this title. (Adds:) A front and rear escort shall be required on the interstate and defense highways for vehicles meeting the parameters of this subsection.

B. If any combination of a motor vehicle and manufactured home or frame thereof, exceeds seventy (70) feet in overall length, or eight and one-half (8 1/2) feet in width, they shall be moved only during daylight hours on the system of interstate and defense highways (adding, on the system of interstate and defense highways). The towing vehicle must be at least three-fourths-ton rated capacity with dual wheels.

LEGISLATION
Tennessee
Length restrictions – Escort vehicles

2019 TN H 1361. Enacted 5/2/2019. Effective immediately.

This bill adds Tenn. Code Ann. § 55-7-205(o) by to provide:

(o) Notwithstanding this section, chapter 4, part 4 of this title, or any other law or regulation to the contrary, the movement of any mobile home not exceeding fourteen feet (14') in width shall not be required to have more than one (1) escort vehicle to follow the movement, or any escort vehicle to precede the movement, on the interstate highway system or highways with four (4) or more lanes, and such movement shall not be required to have more than one (1) escort vehicle to precede the movement, or any escort vehicle to follow the movement, on two-lane highways.

The bill also amends Tenn. Code Ann. § 55-4-407(a) by adding:

The transport of mobile homes exceeding sixteen feet (16') in height shall not be permitted.

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