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McGlinchey Stafford is pleased to bring you the Manufactured Housing Law Update, prepared by the firm's nationally-recognized consumer financial services team. For decades, McGlinchey Stafford has been a leader in the manufactured housing and mortgage lending industries, representing clients in the areas of federal and state law compliance, preemption analysis and advice, nationwide document preparation, licensing support, due diligence, federal and state examination and enforcement action defense, individual and class action litigation defense, and white collar criminal defense.

WELCOME!

It is 2017 and there are important things to note.

First, the FHFA extended its comment period on potential manufactured home chattel loan pilot initiatives in the Duty to Serve Program until March 21.

In addition, Missouri introduced legislation that, if enacted, will eliminate the in-state office requirement imposed on lenders that primarily lend on manufactured homes and modular homes. We will track that legislation and keep you updated through the year.

California has proposed a new fair housing rule to which community operators should pay attention.

Also note, a bankruptcy court in Kentucky determined that the cost of set-up and delivery was not included in the manufactured home's replacement value.

Finally, servicers should take comfort that a RESPA violation will not result in liability for ending a marriage.

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COMMUNITIES

CASE LAW

Eviction – Rules and regulations

CASE NAME: *Troy Oaks Homes & Residential Club, Inc. v. Sokolowski*
DATE: *12/27/2016*
CITATION: *Court of Appeals of Ohio, Eleventh District, Geauga County. Slip Copy. 2016 WL 7626257*

Troy Oaks owns and operates a manufactured home community. Appellants owned a manufactured home, which was located on a lot they leased from Troy Oaks. Troy Oaks filed a complaint in forcible entry and detainer against appellants due to their violation of a provision in Troy Oaks' rules by failing to obtain Troy Oaks' approval before installing a metal roof on their home, which did not comply with Troy Oaks' construction standards.

Prior to trial, appellants moved out of their manufactured home and left it behind. Thus, the case proceeded on Troy Oaks' prayer for an order requiring appellants to remove their home from Troy Oaks' property.

The magistrate found in favor of Troy Oaks, ordering appellants to remove the home or the metal roof, and found appellants liable for any unpaid rents through the date of removal.

The appeals court noted that the complaint alleged that Troy Oaks' rules were incorporated by reference into the lease, and that appellants failed to comply with Troy Oaks' rule requiring residents to seek prior approval. Thus, in addition to alleging a violation of the subject rule, the complaint essentially alleged a breach of the lease.

The Court rejected appellants' argument that the trial court erred in finding they failed to comply with the shingle-style roof requirement because that requirement was only contained in Troy Oaks' minimum construction standards, not the rules. However, there was no requirement that the rules book anticipate every alteration or construction issue that might result, and Troy Oaks had the discretion to determine what alterations were appropriate in the community.

Troy Oaks' violation notices and complaint alleged a violation of the prior-approval rule. The fact that Troy Oaks' minimum construction standards specify shingle roofs for its manufactured homes was offered as evidence to show that appellants' rule violation was material because it resulted in the installation of a roofing material that was not authorized by Troy Oaks' requirements. Appellants were on notice of the existence of these construction standards because the rules book provides that "Troy Oaks has established a set of minimum construction standards for all homes in our community" and "[n]o homeowner may * * * have a home * * * in Troy Oaks unless it meets those minimum standards."

Further, there was no evidence Troy Oaks selectively enforced the prior-approval rule. The fact that appellants and two other residents made other changes without Troy Oaks' prior approval and were not asked to undo them or evicted after Troy Oaks learned about them did not mean the prior-approval rule was selectively enforced because, unlike appellants' metal roof, those other changes complied with Troy Oaks' standards.

Affirmed.

CASE LAW

Eviction – Leases

CASE NAME: *OAK PARK MHC, LLC V. VANN*
DATE: *12/29/2016*
CITATION: *Court of Appeals of Wisconsin. Slip Copy. 2016 WL 7479970*

Residents of Oak Park Terrace reside in mobile homes parked on sites that they lease from Oak Park. At issue

here was a one-year Oak Park site lease, signed by Shawntell Vann.

DePriest was not named in the Vann site lease as either a lessee or an authorized additional occupant. In addition, there was no record of any other written agreement related to the Vann site that referenced DePriest. However, at the time of the eviction hearing in November 2015, DePriest had continuously resided in a mobile home on the Vann site since November 2014 and had contributed to rental payments due under the Vann site lease. At some point after DePriest moved into the mobile home, Vann relocated to another residence. Vann opted not to renew the Vann site lease with Oak Park when it expired in September 2015, and DePriest and Oak Park did not enter into any agreement.

Oak Park management was aware that DePriest was residing in the mobile home throughout DePriest's occupancy. DePriest applied unsuccessfully to Oak Park for a lease in her own name on the Vann site at least twice prior to the November 2015 eviction hearing. Oak Park denied DePriest's rental applications due to a low credit score generated by a consumer reporting agency. Oak Park informed DePriest that she could not be approved without a co-signer, which she never produced.

At the eviction hearing, Oak Park argued that it could evict DePriest because she was an unauthorized occupant of the Vann site, for which there was no longer a valid lease in place.

The circuit court granted a judgment of eviction. DePriest appealed, arguing that her occupancy of the home, and her making periodic rent payments due under the Vann site lease, constituted a valid tenancy on the Vann site.

The appeals court found that Chapter 704 of the Wisconsin Statutes contains the statutory rights and duties of landlords and tenants. However, Wis. Stat. § 710.15 governs mobile home communities as they apply to mobile home tenants who fit the definition of either an "occupant" or a "resident" of a mobile home community.

The Court rejected DePriest's argument that, because she fit the definition of either a periodic tenant or a tenant at will under ch. 704, this entitled her to the protections governing the termination of mobile home tenancies under Wis. Stat. § 710.15.

Under subsection (1m) of Wis. Stat. § 710.15, all agreements for the rental of mobile home sites "shall be by lease." Furthermore, § 710.15(1)(ag) defines a lease as "a written agreement" between an operator of the mobile home community and a resident. Without a written agreement, when the term of the Vann site lease ended, DePriest did not acquire any legal right from either Oak Park or Vann, and did not retain a right to remain on the Vann site.

Affirmed.

CASE LAW

Insurance – Pollution

CASE NAME: *Williams v. Employers Mutual Casualty Company*
DATE: *01/12/2017*
CITATION: *United States Court of Appeals, Eighth Circuit. --- F.3d ----. 2017 WL 117148*

The Collier Organization, Inc. was the owner of Autumn Hills Mobile Home Park.

Michelle Pratt brought a class-action lawsuit on behalf of the residents of Autumn Hills against Collier. Williams was later substituted as class representative. The state court certified a class of Autumn Hills residents.

The complaint alleged that the Autumn Hills drinking water contained illegal levels of Radium, gross alpha particle activity, and coliform bacteria, that Collier was aware of the contamination, failed to correct the issue, and failed to inform the residents, as required by

Missouri law. The complaint additionally alleged that Collier promised to build certain amenities but never did.

Collier informed its Insurers of the complaint, and demanded indemnity and defense. Each of the Insurers declined. Thereafter, Williams entered into an agreement with Collier, which provided that Collier would assign the rights to its insurance proceeds to Williams, as class representative, and the class' recovery would be limited to those insurance proceeds.

The state court entered a judgment in favor of the class and awarded the plaintiffs $70,085,000 for medical monitoring, and $11,952,000 for the loss in value to their homes.

Williams filed an equitable garnishment action in state court against the Insurers.

The Insurers each moved for judgment on the pleadings. Each argued that it was not obligated to defend or indemnify Collier, because none of the claims asserted were covered by the policies issued to Collier. The district court granted judgment on the pleadings in favor of the Insurers. Williams appealed.

The appeals court found that the policies excluded coverage for bodily injury or property damage either "arising out of" the dispersal of pollutants, or which "would not have occurred in whole or part but for" the dispersal of pollutants.

The Court concluded that in the factual context of this case, Radium was unambiguously a contaminant; it both "corrupted" the water "by contact," and made it "unfit for use." As such, the pollution exclusion in each policy barred coverage for bodily injury or property damage that resulted from the presence of Radium or alpha particles in Autumn Hills' water supply.

The Court's reasons for concluding that Radium was a contaminant applied with equal force to coliform bacteria:

The Court further found that the Insurers had no duty to defend Collier against the class' claims for negligence and breach of contract based on the allegations that Collier failed to build various promised amenities, because the policies cover only "bodily injury and property damage" resulting from "occurrences." The Eighth Circuit previously concluded that Missouri law does not consider breaches of contract to be occurrences. Also, the Insurers had no duty to defend the negligence claim premised on Collier's alleged failure to build promised amenities because the factual allegations sounded in contract, not tort.

Having found the insurers had no duty to defend, the Court also found that where an insurer has no duty to defend, it has no duty to indemnify.

Affirmed.

CASE LAW

Fair Housing – Reasonable accommodation

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CASE NAME: *Kuhn v. McNary Estates Homeowners Association, Inc.*
DATE: *01/12/2017*
CITATION: *United States District Court, D. Oregon, Eugene Division. Slip Copy. 2017 WL 125017*

Defendant denied plaintiffs' request for an exception to the HOA's restrictive covenant prohibiting residents from parking large vehicles in their driveways. Plaintiffs sought the exception, asserting the ability to park a Class C RV in front of their home was necessary for their daughter, Khrizma, who is disabled, to use and enjoy the dwelling. After the HOA denied plaintiffs' request, plaintiffs filed this action against the HOA and its president, asserting violations of the federal Fair Housing Amendments Act ("FHAA") and the Oregon Fair Housing Act, as well as a claim for negligence.

Khrizma, who is thirty-four years old, has an IQ of thirty-six and functions at the level of two-and-a-half-year-old.

Khrizma is essentially nonverbal, cannot bathe or groom herself, and uses a wheelchair outside the home. Khrizma is unable to use a toilet without assistance and suffers from severe bladder and bowel incontinence. After consultation with Khrizma's doctors, plaintiffs purchased a small RV equipped with a toilet and shower to ensure Khrizma always was close to a toilet and permit her parents to use the shower to clean her up in the case of accidents while away from home.

According to the Court, declarations submitted by Khrizma's medical providers amply demonstrated a nexus between Khrizma's disability and the need for an accommodation permitting the RV to be parked in front of the house.

The Court found that a plaintiff in an FHAA case need not prove that the requested accommodation is the best or only way to solve a disability-related problem. An individual is not obligated to accept an alternative accommodation suggested by the provider if she believes it will not meet her needs and her preferred accommodation is reasonable.

Even though the requested accommodation was necessary, defendants were only obligated to provide it if it was also reasonable. An accommodation is reasonable under the FHAA when it imposes no fundamental alteration in the nature of the program or undue financial or administrative burdens. Further, a dwelling need not be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

Plaintiffs met their initial burden to show that the requested accommodation was reasonable on its face. They responded to defendants' safety concerns by documenting the length of the RV and their driveway and showing through photo evidence that the RV could be parked in the driveway without extending beyond the property line. They also specifically addressed concerns about visual sight lines by purchasing and offering to install a parabolic mirror. Finally, plaintiffs submitted uncontradicted evidence that their house was on a short, dead-end street with little traffic.

Judgment was entered in favor of plaintiffs regarding liability on the federal-and state-law claims that defendants discriminated against plaintiffs by refusing to make a reasonable accommodation in the provision of services in connection with housing.

PROPOSED RULE
California
Harassment - Disability

This proposed rule adds Cal. Code Regs. tit. 2, §§ 11098.1 thru 11098.6, and 11098.23 thru 11098.30, Housing Regulations Regarding Harassment; Liability for Harassment; Retaliation; and Select Disability Sections, Including Assistive Animals.

The rule provides that "Housing accommodation" or "dwelling" includes:

(1) any building, structure, or portion thereof that is used or occupied as, or designed or intended to be used or occupied as, a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household, and includes all public and common use areas associated with it, if any;

(2) any vacant land that is offered for sale or lease for the construction of any building, structure, or portion thereof intended to be used or occupied as a residence; or

(3) all dwellings covered by the federal Fair Housing Act, such as single family homes, apartments, condominiums, rooms, single room occupancy hotel rooms, transitional housing, supported housing, residential motels or hotels, boardinghouses, shelters, cabins and other structures housing migrant farmworkers, hospices, manufactured

homes, mobile homes and mobile home spaces, floating homes and floating home spaces, communities and live aboard marinas, bunkhouses, and recreational vehicles used as a home or residence.

The rule provides that a person is directly liable for:

(A) The person's own conduct that results in a discriminatory housing practice.

(B) Failing to take prompt action to correct and end a discriminatory housing practice by that person's employee or agent, where the person knew or should have known of the discriminatory conduct.

(C) Failing to fulfill a duty to take prompt action to correct and end a discriminatory housing practice by a third-party, where the person knew or should have known of the discriminatory conduct. The duty to take prompt action to correct and end a discriminatory housing practice by a third-party can be derived from an obligation to the aggrieved person created by contract or lease (including bylaws or other rules of a 3 homeowners association, condominium, or cooperative), or by federal, California, or local law.

A person is vicariously liable for a discriminatory housing practice by the person's agent or employee, regardless of whether the person knew or should have known of the conduct that resulted in a discriminatory housing practice, if the discriminatory housing practice is committed within the scope of the agent or employee's employment.

The regulations provide that it shall be unlawful for a housing provider to harass any person in connection with the sale or rental of a dwelling on account of a person's membership in a protected class. Harassment includes conduct which deprives or interferes with the right to live in a discrimination-free housing environment. Harassment includes both quid pro quo harassment and hostile environment harassment.

It is also unlawful for any housing provider take adverse action against any person for engaging in a protected activity when the dominant purpose for the adverse action is retaliation.

A housing provider has an affirmative duty to make reasonable accommodations when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling unit and public and common use areas. Such accommodations include, but are not limited to, exceptions to standard rules, policies, practices, or services because of the person's disability.

The rule provides for the means by which a housing provider may deny a requested accommodation.

The rule also provides that, when needed to identify or implement an effective, reasonable accommodation for a person with a disability, the law requires a timely, good faith, interactive process between a housing provider and the person with a disability, or the individual's representative, who is requesting the accommodation.

A housing provider may not ask a person to provide documentation showing the disability or disability-related need for an accommodation if the disability or disability-related need is readily apparent or already known to the provider.

If the need for the requested accommodation or modification is not readily apparent, the housing provider may request that the applicant or resident provide documentation from a qualified health care provider, as defined, verifying that an accommodation or modification is necessary because the person has a disability and because the request for accommodation or modification would afford the person with a disability equal opportunity to use and enjoy a dwelling.

PROPOSED RULE
Louisiana
Water - Sewer

This rule amends La. Admin. Code Title 17, Construction, Part I. Uniform Construction Code.

The rule adds Chapter 16, Travel Trailer and Mobile/Manufactured Home Parks.

The rule adds the following definitions:

Mobile/Manufactured Home - a prefabricated home built on a permanent chassis which can be transported in one or more sections and is typically used as a permanent dwelling. Manufactured homes built since 1976 are built to the Manufactured Home Construction and Safety Standards (HUD Code) and display a HUD certification label on the exterior of each transportable section.

Park or Mobile/Manufactured Home Park or Travel Trailer Park - any lot, tract, parcel or plot of land upon which more than one travel trailer and/or mobile/manufactured homes parked for the temporary or permanent use of a person or persons for living, working or congregating.

Park Drainage System - the entire system of drainage piping within the park which is used to convey sewage or other wastes from the mobile/manufactured home or travel trailer drain outlet connection, beginning at its sewer inlet connection at the mobile/manufactured home or travel trailer site, to a community sewerage system, a commercial treatment facility, or an individual sewerage system.

Park Water Distribution System - all of the water distribution piping within the park, extending from the water supply system or other source of supply to, but not including, the mobile/manufactured home or travel trailer's water service connection, and including branch service lines, fixture devices, service buildings and appurtenances thereto.

Service Building - a building housing toilet and bathing facilities for men and women, with laundry facilities.

Sewer Inlet - a sewer pipe connection permanently provided at the travel trailer or mobile/manufactured home site which is designed to receive sewage when a travel trailer or a mobile/manufactured home is parked on such site. It is considered the upstream terminus of the park drainage system.

Water Service Connection - as used in conjunction with mobile/manufactured homes and travel trailers, the water pipe connected between the inlet coupling of the park water distribution system and the water supply fitting provided on the mobile/manufactured home or travel trailer itself.

The rule adds Section 1601.1, Scope, to provide that the requirements set forth in this Chapter shall apply specifically to all new travel trailer and mobile/manufactured home parks, and to additions to existing parks as herein defined, and are to provide minimum standards for sanitation and plumbing installation within these parks, for the accommodations, use and parking of travel trailers and/or mobile/manufactured homes.

Section 1601.3 provides for Sewage Collection, Disposal, Treatment.

Section 1601.5, Materials, provides that, unless otherwise provided for in this Chapter, all piping fixtures or devices used in the installation of drainage and water distribution systems for travel trailer parks and mobile/manufactured home parks shall conform to the quality and weights of materials prescribed by this code.

Section 1601.6, Installation, provides that, unless otherwise provided for in this Chapter, all plumbing fixtures, piping drains, appurtenances and appliances designed and used in the park drainage, water distribution system, and service connections shall be installed in conformance with the requirements of this code.

Section 1602.1, Service Buildings for Independent Travel Trailers, provides that each mobile/manufactured home park which also serves one or more independent travel trailers (in addition to mobile/manufactured homes) shall have at least one service building to provide necessary sanitation and laundry facilities. When a service building is required under this Section, it shall have a minimum of one water closet, one lavatory, one shower or bathtub for females and one water closet, one lavatory, and one shower or bathtub for males. In addition, at least one laundry tray or clothes washing machine and one drinking fountain located in a common area shall be provided.

The rule provides for Service Buildings in travel trailer or mobile/manufactured home parks that also accommodate dependent travel trailers.

Section 1603.1 provides that the sewer main and sewer laterals shall be separated from the park water service and distribution system.

Section 1603.2 provides that the minimum size pipe in any mobile/manufactured home park or travel trailer park drainage system shall be 4 inches. This includes branch lines or sewer laterals to individual travel trailers and mobile/manufactured homes.

Section 1603.3 provides that each mobile/manufactured home and travel trailer shall be considered as 6 fixture units in determining discharge requirements in the design of park drainage and sewage disposal systems.

Section 1603.4 provides that the discharge of a park drainage system shall be connected to a community sewerage system. Where a community sewerage system is not available, an approved commercial treatment facility or individual sewerage system shall be installed in accord with the requirements of LAC 51:XIII (Sewage Disposal).

Section 1603.5 provides that manholes and/or cleanouts shall be provided and constructed as required in Chapter 7 of this code. Manholes and/or cleanouts shall be accessible and brought to grade.

Section 1603.6 provides that sewer inlets shall be 4-inch diameter and extend above grade (G) 3 to 6 inches (76 to 152 mm). Each inlet shall be provided with a gas-tight seal when connected to a travel trailer or mobile/manufactured home and have a gas-tight seal plug for use when not in service.

Section 1603.7 provides that drain connections shall slope continuously downward and form no traps. All pipe joints and connections shall be installed and maintained gastight and watertight.

Section 1603.8 provides that no sewage, waste water, or any other effluent shall be allowed to be deposited on the surface of the ground.

Section 1603.9 requires that, upon completion and before covering, the park drainage system shall be subjected to a static water test performed in accordance with Section 312 of this code.

New section 1604.1 provides that every mobile/manufactured home and travel trailer site shall be provided with an individual branch water service line delivering potable water.

Section 1604.2 provides that water service lines to each mobile/manufactured home site shall be sized to provide a minimum of 17 gpm (1.1 L/s) at the point of connection with the mobile/manufactured home's water distribution system. All water service lines shall be a minimum of 3/4 inch. A separate service shutoff valve shall be installed on each water service line. In instances where a backflow prevention device or assembly is installed on the water service line (see Section 608.16.23), the shutoff valve shall be located on the supply side of the device or assembly.

Section 1604.3 requires that the water service connection from the water service line to the

mobile/manufactured home or travel trailer site shall be not less than 1/2-inch diameter.

DEFAULT SERVICING

CASE LAW

NBA preemption

CASE NAME: *Powell v. Huntington National Bank*
DATE: *12/28/2016*
CITATION: *United States District Court, S.D. West Virginia, Charleston Division. Slip Copy. 2016 WL 7472141*

Plaintiffs brought this putative class action against Huntington, a national banking association organized under the National Bank Act ("NBA"), alleging Huntington illegally assessed late fees in violation of the terms of Plaintiffs' mortgage loan contract and in violation of the West Virginia Consumer Credit and Protection Act ("WVCCPA"), and misrepresented the amount of a claim in violation of the WVCCPA. Plaintiffs alleges that Huntington "agreed to only charge Plaintiffs one late fee for each missed payment" but "Huntington regularly assessed late fees for months in which a payment was timely made within the period stated in Plaintiffs' Note."

The Court found that the NBA preempted the late fee restrictions in the WVCCPA.

CASE LAW

TILA – Servicing transfer

CASE NAME: *Yuszczak v. DLJ Mortgage Capital, Inc.*
DATE: *01/04/2017*
CITATION: *United States District Court, D. Rhode Island. Slip Copy. 2017 WL 44504*

Plaintiffs' mortgage was transferred to DLJ Mortgage Capital sometime between July of 2014 and February of 2015. On February 3, 2016, Plaintiffs filed a Complaint alleging that Defendant failed to notify Plaintiffs of the mortgage transfer as required under the Truth in Lending Act.

Defendant submitted an Undisputed Statement of Facts that described how, "[f]ollowing the transfer of ownership of the Mortgage Loan, DLJ sent Plaintiffs ... notice of the transfer dated August 29, 2014." However, while this statement established that a notice of transfer was sent to Plaintiffs and that the notice was dated August 29, 2014, these two facts did not establish the date on which Defendant actually sent the notice to Plaintiffs. Viewing the facts and drawing inferences in the Plaintiffs' favor, as the Court must for the purposes of summary judgment, the Court could not conclude that the notice of transfer was sent the same day it was dated. Absent additional evidence on this topic, the timeliness of the notice of transfer is a genuine issue of material fact precluding summary judgment.

Defendant's Motion for Summary Judgment denied.

CASE LAW

Bankruptcy – Replacement value

CASE NAME: *In re Neace*
DATE: *01/06/2017*
CITATION: *United States Bankruptcy Court, E.D. Kentucky. Slip Copy. 2017 WL 75747*

Debtors were individuals in a case under chapter 13, and the collateral at issue was a manufactured home. The value of the mobile home must "be determined in light of the purpose of the valuation and of the proposed disposition or use of such property...." 11 U.S.C. 506(a)(1). Here, the purpose of the valuation was to determine the secured portion of Creditor's lien to be paid over the life of Debtors' plan while Debtors retained the manufactured home. Further, in Kentucky, a manufactured or mobile home is personal property unless it is converted to real property under KRS § 186A.297. Under § 506(a)(2), "replacement value" is the standard used to determine the value of personal

property; "replacement value" is defined to mean "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined."

Creditor argued that it was entitled to increase the replacement value of the manufactured home by $13,125, the estimated costs "to setup and deliver the subject mobile home to its current location." The Court concluded, however, that, set-up and delivery costs may not be used as a means to increase the replacement value of a manufactured home as a matter of law, particularly where the debtor intends to retain that property.

CASE LAW

RESPA – Request for information

CASE NAME: *Perron v. J.P. Morgan Chase Bank, N.A.*
DATE: *01/11/2017*
CITATION: *United States Court of Appeals, Seventh Circuit. 845 F.3d 852*

Perron and Jackson owned a home subject to a note and mortgage serviced by J.P. Morgan Chase Bank. In 2012 the couple divorced. They blamed Chase for contributing to the collapse of their marriage by failing to comply with its obligations under RESPA.

In 2011 Perron and Jackson sent letters accusing Chase of erroneously paying the wrong homeowner's insurer using $1,422 from their escrow account. The mistake was their own fault; they had switched insurers without telling Chase. When the bank learned of the change, it promptly paid the new insurer and informed the couple that their old insurer would send a refund check. The bank also told them to forward the refund check in order to replenish the depleted escrow.

They didn't. So the bank adjusted their monthly mortgage payment to make up the shortfall. When the couple refused to pay the higher amount, the mortgage went into default. Instead, they sent Chase two letters requesting information under RESPA and demanding that the bank reimburse their escrow. In response Chase sent a complete account history.

The couple sued Chase claiming that its response was inadequate under RESPA and caused more than $300,000 in damages—including the loss of their marriage. They tacked on a claim for breach of the implied covenant of good faith and fair dealing. The district judge entered summary judgment for Chase.

On appeal, Perron and Jackson argued that Chase breached the duty by holding their partial payment in suspense. However, the mortgage contract contained standard language permitting the bank to accept a partial payment without waiving its right to enforce the terms of the loan.

Perron and Jackson also argued that Chase breached the duty of good faith by failing to apply their escrow refund toward their December 2010 mortgage payment. But Perron and Jackson could have used the escrow refund to pay the remaining balance owed on their December 2010 payment. They did not do so. Chase had no duty to do so for them.

The couple's first letter to Chase requested information about their payments to their account; Chase's application of those payments to principle, interest, and escrow; and the recipients of escrow funds. This was enough to trigger Chase's response duties under RESPA. Chase's response almost perfectly complied with its duties. What was missing was the identity of the insurance company that received the $1,422 escrow payment and a statement of reasons why the December 2010 payment was properly held in suspense.

But the bank had supplied that information in earlier correspondence. So even if Chase's response fell slightly short of full compliance as a technical matter, the couple could not show that they suffered any actual damages "as a result of" any failure to comply with RESPA response duties. Further, Perron and Jackson were not

harmed by an uncorrected account error because there wasn't an error in the first place. In addition, the breakdown of a marriage is not the type of harm that faithful performance of RESPA duties avoids.

Finally, Perron and Jackson failed to produce evidence showing a pattern or practice of RESPA noncompliance, so they have no viable claim for statutory damages. Two examples of similar behavior—in different states, separated by a handful of years, and with no evidence of coordination—isn't enough to support recovery of statutory damages.

Affirmed.

CASE LAW

Eviction – Right of property

CASE NAME: *Segoviano v. Guerra*
DATE: *01/13/2017*
CITATION: *Court of Appeals of Texas, El Paso. --- S.W.3d ----. 2017 WL 128244*

Segoviano and his wife purchased a manufactured home and executed a 25–year promissory note to Green Tree Financial Servicing Corporation. Guerra, entered into a contract with the Segovianos in 2003 to purchase the mobile home and assume the promissory note. Title to the mobile home would not transfer to Guerra unless and until she made all payments due under the promissory note.

Guerra allegedly stopped making payments due under the contract, and the Segovianos sent a demand letter to Guerra for the unpaid amounts due under the contract. Guerra did not pay the amounts due or otherwise respond to the letter. The Segovianos' attorney sent a second demand letter to Guerra advising that the Segovianos had canceled the contract and demanded that she vacate the mobile home. Attached to the demand letter was a written notice to vacate. Guerra did not vacate the mobile home.

Segoviano filed a petition for eviction of Guerra on the ground she was a trespasser. The Justice Court dismissed the case for lack of jurisdiction.

On appeal, the Court noted that a forcible detainer is only available to recover possession of real property. A manufactured home is personal property unless a statement of ownership for the home reflects that the owner has elected to treat the home as real property, and a certified copy of the statement of ownership and location has been filed in the real property records in the county in which the home is located. If the mobile home is personal property, the proper cause of action to recover possession is not a forcible detainer, it is a trial of the right of property.

There was no evidence that the manufactured home here was real property. Further, Segoviano presented evidence to the County Court at Law showing that he and his wife have paid personal property taxes on the manufactured home each year from 2005 to 2015.

Segoviano maintained that both the Justice Court and the County Court at Law had jurisdiction of the forcible detainer cause of action because the contract provided that if Guerra failed to vacate the property after cancellation of the contract, she would be a trespasser subject to a forcible detainer action. The Court found, however, that while parties may by agreement consent to personal jurisdiction and venue in a given court, subject matter jurisdiction exists by operation of law only and cannot be conferred merely by agreement of the parties.

Affirmed.

CASE LAW

RESPA – Loan modification

CASE NAME: *Ditto v. JPMorgan Chase Bank, N.A.*
DATE: *01/17/2017*
CITATION: *United States District Court, S.D. Florida. --- F.Supp.3d ----. 2017 WL 213969*

Defendant is a mortgage servicer that services the loan obligation secured by a mortgage on Plaintiff's property. On April 1, 2016, Plaintiff mailed Defendant a written request for information ("RFI") regarding Plaintiff's mortgage. Plaintiff asserted two claims pursuant to RESPA premised upon Defendant's response to Plaintiff's RFI. Count I alleged that Defendant failed adequately to respond to the RFI, resulting in actual damage to Plaintiff, and Count II alleged that Defendant maintains a pattern or practice of violating RESPA. Defendant moved to dismiss both Counts for failure to state a claim, arguing that it had no legal obligation to respond to Plaintiff's RFI.

The Parties agreed that these requests were for information pertaining to loan modification.

The Court found that, consistent with RESPA's definition of "servicing," courts have routinely held that requests relating to loan modification do not relate to loan servicing within the meaning of § 2605 of RESPA.

Plaintiff's Complaint dismissed without prejudice.

LEGISLATION

Ohio

Assignees – Obligors – Abandoned property

2015 OH H 463. Enacted 1/4/2017. Effective 91st day after the act is filed with Secretary of State.

This bill amends Ohio Rev. Code Ann. § 1303.35 to add that, in a consumer transaction, if any law other than this chapter requires that an instrument include a statement to the effect that the rights of a holder or transferee are subject to a claim or defense that the issuer could assert against the original payee, and the instrument does not include such a statement, all of the following apply:

(1) The instrument has the same effect as if the instrument included such a statement.

(2) The issuer may assert against the holder or transferee all claims and defenses that would have been available if the instrument included such a statement.

(3) The extent to which claims may be asserted against the holder or transferee is determined as if the instrument included such a statement.

The bill also includes provisions regarding the liabilities of accommodation parties and secondary obligors.

The bill contains provisions regarding payments to a person that formerly was entitled to enforce the note, if at the time of the payment the party obliged to pay has not received adequate notification that the note has been transferred and that payment is to be made to the transferee.

The bill amends Ohio Rev. Code Ann. § 2308.02 to require an oral hearing where a mortgagee who files a foreclosure action on a residential property files a motion with the court to proceed in an expedited manner on the basis that the property is vacant and abandoned.

The bill adds Ohio Rev. Code Ann. § 2308.031 to provide that no person shall use plywood to secure real property that is deemed vacant and abandoned under section 2308.02 of the Revised Code.

The bill also amends Ohio Rev. Code Ann. § 2329.311 to provide that if a judgment creditor and the first lienholder each seek to redeem the property, the court shall resolve the conflict in favor of the first lienholder.

LENDING

ADOPTED RULE

Colorado

Disclosures

This rule amends 4 Colo. Code Regs § 725-3, Chapter 1, Definitions.

The rule provides that "Advertisement" has the same meaning as set forth in 12 C.F.R. §1026.2(a)(2) as incorporated by reference in Board Rule 1.36.

"Business Day" has the same meaning as set forth in 12 C.F.R. §1026.2(a)(6) and 12 C.F.R. §1024.2(b) as incorporated by reference in Board Rule 1.36.

"Creditor" has the same meaning as set forth in 12 C.F.R. §1026.2(A)(17) as incorporated by reference in Board Rule 1.36.

"Finance Charge" has the same meaning as set forth in 12 C.F.R. §1026.4(a) as incorporated by reference in Board Rule 1.36.

"Good Faith Estimate Disclosure" is the same disclosure form established in the Real Estate Settlement Procedures Act, specific to Regulation X, Appendix C as incorporated by reference in Board Rule 1.36.

"Application" has the same meaning as set forth in 12 C.F.R. §1026.2(a)(3) and 12 C.F.R. §1024.2(b) as incorporated by reference in Board Rule 1.36.

"Truth-in-Lending Disclosure" is the same disclosure form established by the Truth in Lending Act, specific to Regulation Z, Appendices H-2, H-3, H-4(a), (b), (c) and (d) as incorporated by reference in Board Rule 1.36.

The rule repeals the definition of "MLO Compensation Rule."

"Colorado Lock-in Disclosure" means the Colorado Lock-in Disclosure form created by the Board of Mortgage Loan Originators. This form is to be used for any loan application or transaction that is not under the authority of the TILA-RESPA Integrated Disclosure Rule as defined and incorporated by reference in Board Rule 1.36. This disclosure may be found on the Division of Real Estate's Website. A mortgage loan originator may use an alternate form if the alternate form includes all information required on the Colorado Lock-in Disclosure form, as determined by the Board.

LEGISLATION

Ohio

Recording - Defects

2015 OH S 257. Enacted 1/4/2017. Effective 91st day after the act is filed with Secretary of State.

This bill amends Ohio Rev. Code Ann. § 5301.07 to provide that when a real property instrument is delivered to and accepted by the county recorder of the county in which the real property is situated, and is signed and acknowledged by a person with an interest in the real property that is described in the instrument, the instrument raises both of the following:

(a) A rebuttable presumption that the instrument conveys, encumbers, or is enforceable against the interest of the person who signed the instrument;

(b) A rebuttable presumption that the instrument is valid, enforceable, and effective as if in all respects the instrument was legally made, executed, acknowledged, and recorded.

The presumptions described above may be rebutted by clear and convincing evidence of fraud, undue influence, duress, forgery, incompetency, or incapacity.

The bill defines "real property instrument" as a deed, mortgage, and installment contract, lease, memorandum of trust, power of attorney, or any instrument accepted

by the county recorder under section 317.08 of the Revised Code.

The bill provides that when a real property instrument is of record for more than four (formerly, 21) years from the date of recording of the instrument, and the record shows that there is a defect in the making, execution, or acknowledgment of the instrument, the instrument and the record thereof shall be cured of the defect and be effective in all respects as if the instrument had been legally made, executed, acknowledged, and recorded.

The bill also provides that a real property instrument when delivered to the county recorder of the county in which the real property is situated and filed in the chain of title to the real property provides constructive notice to all third parties of the instrument notwithstanding any defect in the making, execution, or acknowledgment of the real property instrument.

This section shall be given retroactive effect to the fullest extent permitted under Section 28 of Article II, Ohio Constitution. This section shall not be given retroactive effect if to do so would affect any accrued substantive right or vested rights in any person or in any real property instrument.

The bill also includes provisions regarding "incentive districts" and how an owner of real property located within the boundaries of an incentive district proposed whose entire parcel of property is not located within the overlay may exclude the property from the proposed incentive district.

PRESS RELEASE

FHFA

Duty to Serve comments

Issued 2/8/2017.

FHFA Extends Deadline for Public Input on Potential Chattel Loan Pilot in Duty to Serve Program.

The Federal Housing Finance Agency (FHFA) is extending the deadline, from Feb. 17, 2017 to March 21, 2017, for stakeholders to respond to a request for input on potential manufactured home chattel loan pilot initiatives for Fannie Mae and Freddie Mac (the Enterprises) as part of the Duty to Serve underserved markets. FHFA now requests input through its dedicated webpage, www.FHFA.gov/DTS, on potential manufactured home chattel loan pilot initiatives by March 21, 2017.

LICENSING

ADOPTED RULE

Arkansas

Retailers

This rule amends 066.00.1-3 Ark. Code R. § 302, Certification of Retailers, to add to the requirements for certification:

(f) A list of all directors, officers, limited and general partners, or controlling shareholders if the application is made on behalf of a corporation or partnership or a list of all principal owner(s) of the retail location on a form provided by the Agency;

(g) A general business/employment history for each person identified on the application form, including a sworn statement that none of the directors, officers, partners, shareholders or owners of the applicant have:

(i) been found guilty, pleaded guilty or entered a plea of nolo contendere or suffered a judgment in a civil action in this state or any other jurisdiction for forgery, embezzlement, obtaining funds under false pretenses, extortion, conspiracy to defraud, bribery, fraud, misrepresentation or moral turpitude; or

(ii) had a license, permit or certification suspended or revoked by any government agency in this state or any other jurisdiction for violation of Federal or state laws or regulations;

(h) Evidence of a net worth of at least $100,000;

(i) A financial statement, compiled or reviewed by an independent, third-party accounting firm, prepared within six (6) months of the application date, for each owner or partner, if the applicant is a sole proprietor or partnership or the business, if the applicant is a corporation, LLC or LLP; and

(i) Evidence of having at least two (2) years' experience as a licensed retailer or salesperson, working for a licensed retailer, in this state or any other jurisdiction. Applicants purchasing a retail location currently licensed by the Commission will be exempt from the experience requirement.

PENDING LEGISLATION
Missouri
Mortgage Brokers

2017 MO H 746. Introduced 1/25/2017.

2017 MO S 422. Introduced 2/14/2017.

These bills, as introduced, will amend Mo. Rev. Stat. § 443.812 to provide that a residential mortgage loan broker, primarily making loans on manufactured or modular homes, licensed in Missouri shall not be required to maintain a full-service office in Missouri; however, nothing in this subsection shall be construed as relieving a broker of the requirement to be licensed in this state and to obtain a certificate of authority to transact business in this state from the office of the secretary of state.

A residential mortgage loan broker licensed in Missouri who does not maintain a full-service office in Missouri shall file with the license application an irrevocable consent in a form to be determined by the director, duly acknowledged, which provides that for suits and actions commenced against the broker in the courts of Missouri and, if necessary for actions brought against the broker, the venue shall lie in Missouri.

The director may assess the reasonable costs of any investigation incurred by the division that are outside the normal expense of any annual or special examination or any other costs incurred by the division as a result of a licensed residential mortgage loan broker who does not maintain a full-service office in Missouri.

SALES

PROPOSED RULE
Oregon
Ownership documents – Trip permits

These rules amend Or. Admin. R. 918-550-0000 through 918-550-0600, which establish requirements and procedures to obtain an ownership document for a manufactured structures or to obtain an ownership document for a manufactured structure that has been previously exempted

These rules amend 918-550-0010, Definitions, to delete definitions for "Lessor," "Lien holder," "Mortgagee" and "Trust deed beneficiary."

The rules add the definition of "Ownership document" as a document reflecting the status of a manufactured structure as reported to the division, with respect to ownership, relevant security interests, and other information required by ORS 446.566.

The rules add 918-550-0020, Agents of the Department, to provide:

(1) No county may carry out functions under ORS 446.566 to 446.646 related to manufactured structure ownership documents and trip permits unless it has entered into and maintained participation in an agent agreement with and approved by the division.

(2) Refusal by a county to enter into or maintain participation in an agent agreement with and approved by the division is a refusal to accept all applications submitted to that county under ORS 446.571(1)(b)(C).

(3) Refusal by a county that has entered into and maintained participation in an agent agreement with and approved by the division to perform a duty under ORS 446.566 to 446.646 related to manufactured structure ownership documents and trip permits, is refusal to accept all applications submitted to that county under ORS 446.571(1)(b)(C).

The rules amend 918-550-0100, Ownership Document Requirements, to provide that all applications for ownership documents must be made on valid division approved forms and must be accompanied by a division approved county notification form.

The county notification form must be signed by an authorized representative of the appropriate county.

The county notification form is only valid until the expiration date indicated on the form.

The rules amend 918-550-0120, Sale of a Used Manufactured Structure, to provide that if a purchaser submits a division approved notice of sale under ORS 446.641(8), the purchaser must include at least one of the following as acceptable proof of sale:

(1) A bill of sale from the current owner of record on the division's ownership document; or

(2) A Department of Transportation certificate of title to the structure that has a release of ownership signed by the owner.

The rules amend 918-550-0140, Notice of Transfer of Interest in Manufactured Structure, to provide that:

(1) A person who releases, terminates, assigns or otherwise transfers an interest in a manufactured structure, must within 30 days of the transfer, submit a completed and notarized copy of the (adding, “and notarized copy of the”) division approved form to record the release, termination, assignment or otherwise transfer of the interest in the manufactured structure.

(2) The division approved form submitted pursuant to (1) must be accompanied by a county notification form.

(3) The county notification form submitted pursuant to (2) must be signed by an authorized representative of the appropriate county.

(4) The county notification form submitted pursuant to (2) is only valid until the expiration date indicated on the form.

(5) Signing the division approved form serves as an acknowledgment of the release of the interest by the transferor.

The rules delete 918-550-0160, Recording of Manufactured Structure in County Deed Records, and 918-550-0180, Demonstration of Ownership for Lost or Misplaced Ownership Documents.

The rules also amend 918-550-0200, Abandoned Manufactured Structures, to require an abandonment affidavit, instead of a certification affirming the landlord has complied with ORS 446.581.

The rules amend 918-550-0600, Trip Permit Requirements, to require a division approved county notification form.

The rules also add that the division approved county notification form must be signed by an authorized representative of the appropriate county.

The rules provide that the division approved county notification form is only valid until the expiration date indicated on the form.

The expiration date for a trip permit is either the same date as indicated on the county notification form or 30 days after issuance of the trip permit, whichever is sooner.

The rules delete the provision that vehicle transporters who transport a manufactured structure for which a trip permit has been issued shall either forward a signed copy

of the trip permit to the division within 10 days of the movement of the manufactured structure or electronically submit notice of the completion of the move within 10 days using the division's online LOIS system.

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