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!

Summer. is. here. Summer is here. Summer is HERE!!!! Just in time for your summer beach vacation is this month's June edition.

Florida enacted hurricane evacuation center requirements for mobile home developments, just in time for hurricane season.

There are big things afoot in Nevada relating to MH, including the addition of a Housing Advocate to address concerns related to manufactured housing.

Ohio has added significant provisions regarding the eviction and/or removal of manufactured homes. Oregon has made it more difficult to get out of the park business, and harder to kick out tenants who aren't maintaining their homes. Finally, there is an important message from the New York Housing Association.

You may need a mai tai while reading through this edition, but we promise, it's worth it!

IN THIS ISSUE

Contents

ARBITRATION

CASE LAW

Timing of execution of agreement

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CASE NAME: *Usie v. Sunshine Homes, Inc.*
DATE: *05/24/2017*
CITATION: *Court of Appeal of Louisiana, Third Circuit. --- So.3d ----. 2017 WL 2274284*

On March 27, 2007, Usie paid Royer Mobile Homes of Opelousas, Inc. a non-refundable deposit of $500 so Royer would hold the home until she could arrange financing through a third-party lender. On April 10, 2007, Usie executed a purchase agreement with Royer, which identified both the home and the home's purchase price, and which was signed by both Usie and Alan Amy, Royer's president. However, since Usie's financing arrangements were not yet finalized, Royer agreed that it would continue to hold the home, as well as Usie's $500 check.

On April 19, 2007, First Louisiana National Bank, on behalf of Usie, issued a check payable to Royer for the bulk of the home's purchase price. The remaining balance of the purchase price was obtained from the trade-in value of Usie's former home. On May 5, 2007, Usie returned to Royer to sign additional documents, one of which was entitled "ACKNOWLEDGMENT AND AGREEMENT (HUD CODE HOME)," which contained an arbitration agreement. No representative of Sunshine, the manufacturer, was present when the parties executed this document, although the signature of Sunshine's service manager was added later.

In 2014, Usie alleged that there was roof damage, rotting wood, and mold in her home and filed suit against Royer and Sunshine.

In response, Royer and Sunshine filed exceptions of prematurity, arguing that Usie should be required to arbitrate her claims. The trial court sustained the exceptions and stayed the matter pending resolution of the claims in arbitration. Usie filed a writ application seeking reversal.

The Court found that the written purchase agreement in this instance was executed by Usie and Royer on April 10, 2007. Pursuant to La.Civ.Code art. 2456, "[o]wnership is transferred between the parties as soon as there is agreement on the thing and the price is fixed, even though the thing sold is not yet delivered nor the price paid."

Additionally, there was no provision in the purchase agreement making the procurement of financing a condition precedent to the sale. The language in the document itself referred to the purchase as a completed transaction. Moreover, there was neither verbal discussion nor written provisions concerning the necessity to arbitrate at the time the purchase agreement was executed. The first mention of the arbitration agreement was contained in the Acknowledgment and Agreement executed by the parties on May 5, 2007. However, none of the documents executed on May 5, 2007 were necessary for a completed sale because the ownership of the home was transferred on April 10, 2007.

The Court further found that an arbitration agreement is invalid when it is not shown to be part of the consideration for the purchase of the home and that the manufacturer, who was not a party to the purchase agreement, could not unilaterally assign additional consideration for the perfection of the sale. The Court held that Usie's consent to the arbitration agreement was invalidated based on her legal error in believing that her execution of the arbitration agreement was a prerequisite to her gaining possession of the home.

Reversed.

COMMUNITIES

CASE LAW

Non-conforming use

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CASE NAME: *CITY OF DES MOINES, IOWA, Plaintiff-Appellee, v. MARK OGDEN, Defendant-Appellant*
DATE: *06/07/2017*
CITATION: *Court of Appeals of Iowa. Slip Copy, Unpublished Disposition. 2017 WL 2461550*

Ogden owned and operated a mobile home park. Ogden purchased the property in 2013, but he had been involved in the maintenance and upkeep of the park since his uncle purchased the property around 1975, and he started actively managing the park in 1999. The property contained approximately thirty-nine mobile home pads that were leased to park residents. Approximately half of the pads and homes were situated on the outside perimeter of the property. A narrow, u-shaped access road circled the inside of the property and separated the interior homes from the perimeter homes.

The property was used as a tourist camp in 1947. Sometime shortly thereafter, the use of the property changed to a mobile home park. In 1955, the City of Des Moines issued a certificate of occupancy allowing the operation of a trailer court on the property contrary to the 1953 Des Moines zoning ordinances, which prohibited the use of mobile home parks.

The record did not indicate the city took any action against the property after the certificate of occupancy was issued in 1955 until 2003, when the owner of the park was allegedly operating an unauthorized auto dealership on the property. The city did not issue any additional warnings or citations regarding the mobile home use until 2014.

On August 5, 2014, the neighborhood inspection zoning administrator for the city, notified Ogden that the "park has numerous violations of municipal zoning codes that were in place at the time the land was converted to a mobile home park." Ogden did not take any action to remedy the violations, and, in October 2014, the city filed a petition seeking an injunction for the violations.

The trial court held that a discontinuance of the nonconforming use under the 1955 Certificate of Occupancy was necessary for the safety of life or property. The court also held that Ogden's "use of [the] property has intensified beyond acceptable limitations" because the conditions "pose a real threat in the event of an emergency." Ogden appealed.

The appeals court found that, although the mobile home park had not changed in size or use, the record demonstrated it had grown within its borders in the numbers and location of structures attached to the mobile homes, resulting in a narrowing of open space on the roadways and between the homes, creating a dangerous fire hazard. In addition, the crowded conditions and the narrow, ten-foot access road would inhibit the ability of the fire department to respond effectively. Law enforcement and other public officials would face similar obstacles in providing public services to the property. The district court did not err in enjoining the nonconforming use to protect the "safety of life or property," as authorized by the applicable certificate of occupancy code. The absence of previous notices of violations from the City or the fire department did not justify the risk to families living in the park in the event of an emergency.

For similar reasons, Ogden's use of the property was not a lawful intensification of an existing nonconforming use. The present congestion and crowding changed the nature and character of the 1955 non-conforming use and presented a danger to residents and neighbors of the park.

The Court found that Ogden's claim of equitable estoppel failed because the record did not support the city's

failure to enforce the zoning ordinance amounted to a false representation or concealment of material fact. Ogden also failed to prove misconduct by the city in order to succeed on his equitable estoppel claim.

Affirmed.

CASE LAW

Water and sewer - Billing

CASE NAME: *Gloria Scott, et al. Appellant v. Universal Utilities, et al. Appellees. Additional Party Names: Choice Properties, Inc., Friendly Village Limited Partnership, Jill Smith, Meadows of Perrysburg, LLC*
DATE: *06/16/2017*
CITATION: *Court of Appeals of Ohio, Sixth District, Wood County. Slip Copy. 2017 WL 2610660*

Appellant, Jill Smith, was a resident of appellee, Meadows of Perrysburg, LLC, a mobile home park. Appellee, Friendly Village Limited Partnership, is also a mobile home park. The parks are managed by appellee Choice Properties, Inc. Appellee Universal Utilities is the water and sewer billing company for the mobile home parks. The residents of the parks are supplied water and sewer services through the Northwestern Water and Sewer District which provides water for several townships in the county.

Each park has a main water meter that measures the amount of water provided by the District. Each mobile home lot has its own meter to measure water usage by the individual residents. The parks pay the water and sewer amounts billed by the District. In turn, Choice Properties, through Universal, bills the individual residents.

Plaintiff-appellant Jill Smith and Gloria Scott (who later withdrew) and Jamie Clark (who was dismissed) filed a complaint and request for class certification, claiming that the residents of appellees' mobile home parks were overcharged for water and sewer services.

Appellees argued that Choice Properties does not add a surcharge to the rates it is charged by the District. Further, as is industry standard, customers are charged in 100 cubic feet increments only after they use the entire 100 cubic feet.

Appellant asserted four reasons she believed she was being overcharged: (1) she was paying more for water than her brother who lived in the same town; (2) her water bill fluctuated; (3) when her pipes burst, she had a $6 water bill for two months then it increased to $120–$150; and (4) variations in water bills among neighbors.

The trial court granted appellees' motion for summary judgment. The Court noted that appellant's water and sewer bills failed to show that she was ever charged an “administrative” or a “management” fee. The court found appellant admitted that she had no facts to support her claims, the clear establishment of Universal Utilities' billing practices refuted appellant's assertions, and appellant failed to demonstrate that appellant was overcharged for water or sewer or that her meter was inaccurate. Plaintiff appealed.

The appeals court agreed with the trial court that appellant failed to set forth any material issues of fact for trial. Appellant, as the plaintiff, had the ultimate burden of proof in this case. Appellant admitted that she had no facts on which to base her arguments. Further, the billing system, by the 100 cubic foot, is the industry standard and is billed only after its use. Finally, plaintiff’s expert admitted that appellant's meter was working properly.

Affirmed.

LEGISLATION
California
Disclosure

2017 CA A 294. Enacted 6/28/2017. Effective 1/1/2018.

This bill amends Cal. Civ. Code § 798.28, under the Mobilehome Residency Law.

The bill requires that the management of a mobile home park disclose, in writing, within 10 business days, the name, business address, and business telephone number of the mobile home park owner upon the receipt of a written request of a homeowner (adding, "within 10 business days").

LEGISLATION
Colorado
Termination - Victim

2017 CO H 1035. Enacted 6/1/2017. Effective immediately.

This bill amends Colo. Rev. Stat. § 38-12-402 to provide that a landlord shall not include in a residential rental agreement or lease agreement for housing a provision authorizing the landlord to terminate the agreement or to impose a penalty on a residential tenant for calls made by the residential tenant for peace officer assistance or other emergency assistance in response to a domestic violence or domestic abuse situation involving domestic violence, domestic abuse, unlawful sexual behavior, or stalking (adding, unlawful sexual behavior, or stalking).

The bill provides that, to provide evidence that he or she is a victim of unlawful sexual behavior, domestic violence, or domestic abuse, a tenant may provide to his or her landlord a police report written within the prior sixty days, a valid protection order, or a written statement from a medical professional or application assistant who has examined or consulted with the victim, which written statement confirms such fact; and

To provide evidence that he or she is a victim of stalking, a tenant may provide to his or her landlord a police report written within the prior sixty days, a valid protection order, or a written statement from an application assistant who has consulted with the victim, which written statement confirms such fact.

The bill adds that, if a tenant to a residential rental agreement or lease agreement notifies the landlord that the tenant is a victim of unlawful sexual behavior, stalking, domestic violence, or domestic abuse, the landlord shall not disclose such fact to any person except with the consent of the victim or as the landlord may be required to do so by law.

If a tenant to a residential rental agreement or lease agreement terminates his or her lease pursuant to this section because he or she is a victim of unlawful sexual behavior, stalking, domestic violence, or domestic abuse, and the tenant provides the landlord with a new address, the landlord shall not disclose such address to any person except with the consent of the victim or as the landlord may be required to do so by law.

LEGISLATION
Connecticut
Assistance dogs

2017 CT H 7214. Enacted 7/6/2017. Effective 10/1/2017.

This bill amends Conn. Gen. Stat. § 46a-44 to add "assistance dog" to provisions that any blind, deaf or mobility impaired person or any person training a dog as a guide dog for a blind person or an assistance dog to assist a deaf or mobility impaired person shall be entitled to visit any place of public accommodation, resort or amusement or a dwelling as a guest of a lawful occupant thereof, accompanied by such person's guide dog or

assistance dog, and such person may keep such dog with him or her at all times in such public accommodation, resort, amusement or dwelling at no extra charge, provided such dog shall be in the direct custody of such person and shall be wearing a harness or an orange-colored leash and collar.

"Dwelling" means any building, structure, mobile manufactured home park or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, mobile manufactured home park or portion thereof.

The bill also provides that any person who intentionally interferes with a blind, deaf or mobility impaired person's use of a guide dog or an assistance dog, including, but not limited to, any action intended to harass or annoy the blind, deaf or mobility impaired person, the person training a dog as a guide dog or assistance dog or the guide dog or assistance dog, or who denies the rights afforded to a blind, deaf or mobility impaired person or person training a dog as a guide dog or an assistance dog shall be guilty of a class C misdemeanor, provided such blind, deaf or mobility impaired person or person training a dog as a guide dog or an assistance dog complies with the applicable provisions.

ADOPTED RULE

Florida

Hurricane shelters

Effective 7/13/2017, this rule adds new subsection (11)(d) to Fla. Admin. Code Ann. r. 73C-40.0256 to provide that mobile home developments shall have onsite storm evacuation centers with sufficient structural characteristics, warning systems, and evacuation procedures consistent with the requirements identified in the regulation, for the resident population in the event of a hurricane.

LEGISLATION

Nevada

Account for Housing Inspection and Compliance - Fees

2017 NV S 500. Enacted 6/9/2017. Effective 7/1/2017.

This bill: consolidates the Manufactured Housing Division of the Department of Business and Industry within the Housing Division of the Department; creates the Account for Housing Inspection and Compliance within the Housing Division; and creates the position of Housing Advocate within the Housing Division.

The bill amends Nev. Rev. Stat. § 232.510, which created the Department of Business and Industry, by deleting the Manufactured Housing Division and making conforming amendments to applicable statutes, including that a lien is to be filed with the Housing Division instead of the Manufactured Housing Division.

The change also affects, among other things, the wording of the notice from a landlord to a tenant in Nev. Rev. Stat. §§ 118B.070 and 118B.071, headed, TENANTS OF MANUFACTURED HOME PARKS ARE ENTITLED TO CERTAIN RIGHTS UNDER NEVADA REVISED STATUTES.

Nev. Rev. Stat. § 118B.185 provides that each owner of a manufactured home park shall pay to the Division an annual fee established by the Administrator which must not exceed $5 for each lot within that park. This bill adds that the Administrator shall notify the owner of each manufactured home park on or before July 1 of each year of the fee imposed pursuant to this section.

The section is also amended to provide that, if an owner fails to pay the fee on or before August 1 of each year (formerly, within 30 days after receiving written notice of its amount), a penalty of 50 percent of the amount of the

fee must be added. The owner is not entitled to any reimbursement of this penalty from his or her tenants.

Nev. Rev. Stat. § 118B.213 provides that, in addition to the fee established pursuant to NRS 118B.185, the owner of a manufactured home park that is operated for profit shall pay to the Division an annual fee of $12 for each lot within the park. The owner shall not impose a fee or surcharge to recover from his or her tenants the costs resulting from the annual fee per lot paid pursuant to this subsection, or any related penalty.

The Administrator shall notify the owner of each manufactured home park that is operated for profit in this state on or before July 1 of each year of the fee imposed pursuant to this section.

The bill deletes the provision that, if on May 15 of that year the balance in the Fund which is attributable to deposits pursuant to this section exceeds $1,000,000, the Administrator shall not charge or collect a fee pursuant to this section.

The bill also provides that, if an owner fails to pay the fee on or before August 1 of each year (formerly, within 30 days after receiving written notice from the Administrator to do so), a penalty of 50 percent of the amount of the fee must be added.

The bill adds two new sections to Chapter 319 of the Nev. Rev. Stat. to create the Account for Housing Inspection and Compliance in the State General Fund.

The Account must be administered by the Division. Except as otherwise provided in NRS 118B.213 and 489.265, all money received by the Division pursuant to NRS 118B.185 or any other source must be deposited into the Account.

The Administrator shall adopt regulations setting forth the use of the money in the Account, including, without limitation:

(a) Licensing, regulating and inspecting:

(1) Housing for persons of low-income that is financed pursuant to this chapter; and

(2) Manufactured homes, mobile homes, manufactured buildings, commercial coaches, factory-built housing or manufactured home parks pursuant to chapters 118B, 461, 461A and 489 of NRS;

(b) Licensing, regulating and inspecting manufacturers, general servicepersons, dealers, responsible managing employees, salespersons, distributors and specialty servicepersons pursuant to chapter 489 of NRS;

(c) Maintaining title records, and issuing certificates of ownership, property liens and conversions to real property of a mobile home or manufactured home;

(d) Investigating complaints, including, without limitation, complaints:

(1) Between a landlord and a tenant of a mobile home park; and

(2) Alleging unlicensed activity; and

(e) Administering any educational and training program for a provider of manufactured housing.

The Housing Advocate is also created within the Division.

The Housing Advocate shall:

(a) Respond to written and telephonic inquiries received from residents who reside in affordable housing and manufactured housing and provide assistance to such residents in understanding their rights and responsibilities;

(b) Conduct community outreach and provide information concerning housing to residents who reside in affordable housing and manufactured housing;

(c) Identify and investigate complaints of residents of affordable housing and manufactured housing that relate to their housing and provide assistance to such residents to resolve the complaints;

(d) Establish and maintain a system to collect and maintain information pertaining to written and telephonic inquiries received by the Division; and

(e) Any other duties specified by the Administrator.

The bill amends Nev. Rev. Stat. § 319.510 to add that money deposited in the Account for Low-Income Housing must be used to assist eligible persons by supplementing their monthly rent for the manufactured home lot on which their manufactured home is located. However, the Division may expend not more than $75,000 per year of the money deposited in the Account pursuant to NRS 375.070 for the purpose set forth in this paragraph.

The bill amends Nev. Rev. Stat. § 489.4971 to provide that any person who entered into an agreement for the sale, purchase, lease, distribution, alteration, repair, remodeling or manufacture of a manufactured home, mobile home, manufactured building or commercial coach or factory-built housing may file a claim against a person licensed pursuant to the provisions of this chapter. Such a claim may be satisfied by the Account.

Formerly, the section created the Account for Education and Recovery Relating to Manufactured Housing within the Fund for Manufactured Housing to satisfy the claims of purchasers of manufactured homes, mobile homes, manufactured buildings, commercial coaches or factory-built housing against persons licensed pursuant to the provisions of this chapter. Any balance in the Account over $500,000 at the end of any fiscal year was to be set aside and used by the Administrator for education relating to manufactured homes, mobile homes, travel trailers, manufactured buildings, commercial coaches or factory-built housing.

ADOPTED RULE

Nevada

Limited lien resale license

Effective 6/21/2017, this rule amends Nev. Admin. Code §§ 489; 489.416, .750, .760, .775, .780, .785 to: provide requirements for an application for a certificate of ownership for certain mobile homes or manufactured homes; revise provisions relating to the application for and issuance of a limited lien resale license; revise provisions relating to standards for installation of mobile homes and manufactured homes; and make various other changes relating to limited lien resale licenses.

Nev. Admin. Code § 489 has been amended to add a new section to provide that an application for a certificate of ownership for a mobile home or manufactured home acquired through a voluntary surrender must be accompanied by an affidavit on a form supplied by the Manufactured Housing Division stating that the mobile home or manufactured home was acquired by the landlord or manager of the mobile home park through a voluntary surrender by the owner of the mobile home or manufactured home.

Nev. Admin. Code § 489.416 has been amended to update the publication information of a safety manual adopted by reference by the Administrator and update information regarding the availability of the manual.

The rule amends Nev. Admin. Code § 489.760 to provide that “Licensee” means a landlord or manager of a mobile home park to whom a limited lien resale license (adding, “lien”) is issued by the Division. Nev. Admin. Code §§ 489.780 489.785 have also been amended to refer to a limited lien resale license (rather than a limited resale license).

Nev. Admin. Code § 489.775 has been amended to provide for the application for and issuance of a limited lien resale license for the resale of a mobile home or

manufactured home acquired through a voluntary surrender, and to provide that a copy of the state business license of the mobile home park is required.

LEGISLATION
Nevada
Discrimination

2017 NV S 188. Enacted 5/27/2017. Effective 7/1/2017.

This bill revises existing provisions that prohibit various types of discrimination to include discrimination on the basis of sexual orientation and gender identity or expression.

ADOPTED RULE
Ohio
Building code

This adopted rule is effective 11/1/2017, and repeals and readopts Ohio Admin. Code 4101:1-1-01 thru 4101:1-35-01 to update the current code to reflect the 2015 edition of International Building Code.

The rule amends Ohio Admin. Code 4101:1-1-01, Administration, to provide:

101.2, Scope. The provisions of the "Ohio Building Code", the "Ohio Mechanical Code", and the "Ohio Plumbing Code" shall apply to the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, maintenance, removal and demolition of every building or structure or any appurtenances connected or attached to such buildings or structures. As provided in division (B) of section 3791.04 of the Revised Code, no plans or specifications shall be approved or inspection approval given unless the building represented by those plans or specifications would, if constructed, repaired, erected, or equipped according to those plans or specifications, comply with Chapters 3781 and 3791 of the Revised Code and any rules adopted by the board. An owner may exceed the requirements of the "Ohio Building Code" in compliance with section 102.9. This code applies to detached one-, two-, and three-family dwellings and structures accessory to those dwellings only to the extent indicated in section 310 of this code.

Exceptions:

7. Manufactured homes constructed under "24 CFR Part 3280," "Manufactured Home Construction and Safety Standards" and within the scope of the rules adopted by the Ohio Manufactured Home Commission, including additions, alterations and all utility connections from the utility service point to the manufactured home. This exception does not apply to changes of occupancy of manufactured homes, except that a manufactured home located within a manufactured home park and used by the park operator to promote the sale/rental of manufactured homes in that park remains exempt.

(Formerly, this exception to the rule read: 7. Manufactured homes constructed under "24 CFR Part 3280," "Manufactured Home Construction and Safety Standards" and within the scope of the rules adopted by the Ohio Manufactured Home Commission.)

LEGISLATION
Ohio
Division of Industrial Compliance - Removal

2017 OH H 49. Enacted 6/30/2017. Effective 1/1/2018.

This bill, among other things, replaces the Manufactured Homes Commission with the Division of Industrial Compliance of the Department of Commerce.

The bill amends Ohio Rev. Code Ann. § 1923.12 to provide that, before requesting a writ of execution, a park operator, after identifying any persons who have an outstanding right, title, or interest in the home, shall provide to the person written notice to remove the home from the manufactured home park or arrange for the

sale of the home within twenty-one days from the date of the delivery of the notice, containing specified language, in a conspicuous manner.

The park operator shall deliver or cause the delivery of the notice by personal delivery to the person, or by ordinary mail sent to the last known address of the person. If a sale of the home is arranged, the person shall pay any rent due to the park operator during the pendency of the sale. If the person does not remove the home or arrange for its sale within twenty-one days from the date of the delivery of the notice, the park operator may follow the required procedures to permit the removal of the home from the manufactured home park, and the potential sale, destruction, or transfer of ownership of the home.

If the search or inquiries reveal no person who has an outstanding right, title, or interest in the manufactured home or mobile home, the park operator may follow the procedures of division (B) of section 1923.13 and division (B) of section 1923.14 of the Revised Code to permit the removal of the home from the manufactured home park, and the potential sale, destruction, or transfer of ownership of the home.

When a resident who has been evicted from a manufactured home park pursuant to a judgment is the titled owner of a manufactured home or mobile home and is or becomes deceased prior to the removal of the home from the manufactured home park, and no probate court has granted administration with respect to the resident's estate within ninety days of the deceased's death (adding, “within ninety days of the deceased’s death”), the park operator may store the home at a storage facility or at another location within the manufactured home park before and after a probate court grants letters testamentary or of administration with respect to the resident's estate pursuant to Title XXI of the Revised Code.

The bill adds that, if a probate court grants administration with respect to the resident's estate within ninety days of the date of the eviction of the resident from the park, the removal of the manufactured home or mobile home from the park and potential sale, destruction, or transfer of ownership of the home shall be conducted pursuant to this section.

If no probate court grants administration with respect to the resident's estate within ninety days (formerly, one year) of the date of the eviction of the resident from the manufactured home park pursuant to a judgment entered under section 1923.09 or 1923.11 of the Revised Code, the park operator shall conduct or cause to be conducted a search of the appropriate public records that relate to the manufactured home or mobile home, and make or cause to be made reasonably diligent inquiries, for the purpose of identifying any persons who have an outstanding right, title, or interest in the home.

If the search or inquiries reveal any person who has an outstanding right, title, or interest in the manufactured home or mobile home, the park operator shall provide to the person a written notice to remove the home from the manufactured home park or arrange for the sale of the home within twenty-one days from the date of the delivery of the notice. The notice shall be in the form described in this section. The park operator shall deliver or cause the delivery of the notice by personal delivery to the person or by ordinary mail sent to the last known address of the person. If a sale of the home is arranged, the person shall pay any rent due to the park operator during the pendency of the sale. If the person does not remove the home or arrange for its sale within twenty-one days from the date of the delivery of the notice, the park operator may follow the procedures of division (B) of section 1923.13 and division (B) of section 1923.14 of the Revised Code to permit the removal of the home from the manufactured home park, and the potential sale, destruction, or transfer of ownership of the home.

If the search or inquiries reveal no person who has an outstanding right, title, or interest in the home, the park operator shall publish notice of a petition for a writ of execution in a newspaper of general circulation in the county where the home has been abandoned. The publication shall contain the name of the deceased and the last known address of the home and shall run for two consecutive weeks. The park operator shall provide to the clerk of the court written certification by the newspaper of the dates of the publication and an affidavit signed by the operator attesting to the publication. The park operator may then follow the procedures of division (B) of section 1923.13 and division (B) of section 1923.14 of the Revised Code to permit the removal of the home from the manufactured home park, and the potential sale, destruction, or transfer of ownership of the home.

The bill amends Ohio Rev. Code Ann. § 1923.13 to change the language in the writ of execution to be issued by a court after the entry of a judgment of restitution against a manufactured home park resident or the estate of a manufactured home park resident to provide that if the defendant holds over on the premises subsequent to an eviction judgment against the defendant, three days after the eviction judgment, the plaintiff is commanded to post a fourteen-day notice to the defendant to sell or remove the manufactured home or mobile home from the premises, at the defendant's cost. If the manufactured home or mobile home is not sold or removed by the defendant at the expiration of the fourteen-day notice, the defendant forfeits the right to the manufactured home or mobile home and the plaintiff is authorized to exercise the rights set forth herein.

Further, the writ provides that the Sheriff is authorized to cause the manufactured home or mobile home, and all personal property on the residential premises, to be retained at their current location on the residential premises, until they are disposed of in a manner authorized by the writ or the law of the state (formerly, the Sheriff had the option of, at the Sheriff's option, removing the home from the manufactured home park and, if necessary, moved to a storage facility of the Sheriff's choice).

The writ also provides that if the manufactured home or mobile home has been abandoned by the defendant, the park operator is commanded to submit a notarized affidavit to the county auditor of the county where the park is located listing the titled owner, address, serial number, and the value of the manufactured home or mobile home. Within fifteen days after receipt of the affidavit, the county auditor is commanded to confirm whether the county auditor agrees or disagrees with the stated value on the affidavit. Either of the following shall apply:

(1) If the county auditor agrees with the stated value on the affidavit, the county auditor is commanded to sign the original affidavit attesting to the agreement of the value of the manufactured home or mobile home and return the original affidavit to the park operator within fifteen days after receipt of the affidavit from the park operator.

(2) If the county auditor disagrees with the stated value on the affidavit, the county auditor is commanded to notify the park operator of the disagreement within fifteen days after receipt of the affidavit. The park operator is authorized to submit additional materials in support of the stated value on the affidavit consistent with industry valuation standards within ten days after receipt of the notice of the disagreement. If the park operator submits additional materials in support of the stated value on the affidavit, then after reviewing the additional materials submitted, either of the following shall apply:

(a) If the county auditor agrees with the stated value on the affidavit, the county auditor is commanded to sign the original affidavit attesting to the agreement of the value of the manufactured home or mobile home and return the original affidavit to the park operator within ten days after receipt of the additional materials.

(b) If the county auditor continues to disagree with the stated value on the affidavit, the county auditor is commanded to notify the park operator of the continued disagreement within ten days of receipt of the additional material and return the original affidavit to the park operator. The park operator is authorized to appeal to this court for a ruling on the disagreement pursuant to court rule.

The park operator is commanded to submit to the court the affidavit signed by the county auditor stating the value of the manufactured home or mobile home, which shall be deemed to be the park operator's sworn testimony. If the park operator knowingly falsifies information on the affidavit the park operator shall be guilty of falsification under divisions (A)(1), (3), and (6) of section 2921.13 of the Revised Code.

If the manufactured home or mobile home has been so abandoned and has a value of more than three thousand dollars, and the requirements of section 1923.12 of the Revised Code have been satisfied, the Sheriff is authorized to cause the sale of the home and personal property in the home.

If the manufactured home or mobile home has been abandoned and has a value of three thousand dollars or less and if the requirements of section 1923.12 of the Revised Code have been satisfied, the Sheriff is authorized to cause the presentation of this writ to a clerk of the court of common pleas title division for the issuance of a certificate of title transferring the title of the home to the plaintiff, free and clear of all security interests, liens, and encumbrances, in accordance with division (B)(4) of section 1923.14 of the Revised Code (deleting the option of causing the sale or destruction of the home).

The bill amends Ohio Rev. Stat. Ann. § 1923.14 to provide that a person having any outstanding right, title, or interest in the home or personal property is not required to consent to the notice required under this division in order for the writ to be executed.

Except as otherwise provided, after causing the defendant to be removed from the residential premises of the manufactured home park, if necessary, by writ of restitution, and receiving a writ of execution described in division (B) of section 1923.13 of the Revised Code, in accordance with the writ, the sheriff, police officer, constable, or bailiff may cause the manufactured home or mobile home that is the subject of the writ, and all personal property on the residential premises to be retained at their current location on the residential premises, until they are claimed by the defendant or they are disposed of in a manner authorized by division (B)(3), (4), or (6) of this section or by another section of the Revised Code (deleting the option that, at the sheriff's, police officer's, constable's, or bailiff's option, the home be removed from the manufactured home park and, if necessary, moved to a storage facility of the sheriff's, police officer's, constable's, or bailiff's choice).

The bill adds that the sheriff, police officer, constable, or bailiff shall not be liable for any damage caused by the park operator's removal of the manufactured home or mobile home, or the removal of the personal property from the residential premises, or for any damage to the home or personal property during the time the home or property remains abandoned or stored in the manufactured home park.

The bill provides that, after the sale, the sheriff, police officer, constable, or bailiff shall first pay the costs for any moving of and any storage outside the manufactured home park of the home and any personal property pursuant to this section, the costs of the sale, any advertising expenses paid by the park operator for the sale of the manufactured home or mobile home and any unpaid court costs assessed against the defendant in the underlying action.

The bill provides that, in accordance with division (E)(3) of section 4503.061 of the Revised Code, the plaintiff shall notify the county auditor of the transfer of title. Pursuant to section 4503.061 of the Revised Code, if the manufactured home or mobile home is destroyed or removed, the plaintiff shall provide the county auditor with notice of removal or destruction of the manufactured home or mobile home.

The bill amends Ohio Rev. Code Ann. § 4781.07 to provide that if a township, municipal corporation, or county does not have a building department that is certified to exercise the commission's enforcement authority, accept and approve plans and specifications for foundations, support systems and installations, and inspect manufactured housing foundations, support systems, and manufactured housing installations, it may designate by resolution or ordinance another building department that has been certified pursuant to exercise the commission's enforcement authority, accept and approve plans and specifications for foundations, support systems and installations, and inspect manufactured housing foundations, support systems, and manufactured housing installations. The designation is effective upon acceptance by the designee.

An owner of a manufactured home or an operator of a manufactured home park may request an inspection and obtain an approval from any building department certified pursuant to this section designated by the township, municipal corporation, or county in which the owner's manufactured home or operator's manufactured home park is located.

The bill adds Ohio Rev. Code Ann. § 4781.281 to provide that the Manufactured Homes Commission may charge a fee for inspector certification. The fees shall include all of the following:

(1) The nonrefundable certification fee for inspectors shall not be greater than fifty dollars for each three-year certification period.

(2) The nonrefundable certification renewal fee for inspectors shall not be greater than fifty dollars.

(3) The nonrefundable late fee for certification renewal shall not be greater than twenty-five dollars in addition to the renewal fee.

The commission may adopt rules pursuant to Chapter 119. of the Revised Code establishing fees less than those described in this section.

The bill also adds Ohio Rev. Code Ann. §4781.56 to provide that the Manufactured Homes Commission may contract with the board of health of a city or general health district to permit the commission to abate and remove, in accordance with sections 3707.01 to 3707.021 of the Revised Code, any abandoned or unoccupied manufactured home or mobile home that constitutes a nuisance and that is located in a manufactured home park within the board of health's jurisdiction. Under the contract, the commission may receive complaints of abandoned or unoccupied manufactured homes or mobile homes that constitute a nuisance and may, by order, compel the park operator to abate and remove the nuisance. The park operator shall pay any costs for the removal.

The sheriff, police officer, constable, or bailiff shall not be liable pursuant to the abatement or removal of any abandoned or unoccupied manufactured home or mobile home pursuant to this section.

Ohio Rev. Code Ann. § 4781.57 has been added to provide that the park operator of a manufactured home park shall ensure that all manufactured home park buildings, lots, streets, walkways, manufactured homes, mobile homes, and other facilities located in the manufactured home park shall be maintained in a condition satisfactory to the commission at all times.

The bill adds Ohio Rev. Code Ann. § 4781.011 to provide that, whenever the term "Manufactured Homes Commission" is used, referred to, or designated in any

statute, rule, contract, grant, or other document, the use, reference, or designation shall be deemed to refer to "the Department of Commerce." Whenever the term "executive director of the Manufactured Homes Commission" is used, referred to, or designated in any statute, rule, contract, grant, or other document, the use, reference, or designation shall be deemed to mean the director of commerce.

Ohio Rev. Code Ann. § 4781.02 has been added to create the Manufactured Homes Advisory Council, within the Department of Commerce.

Ohio Rev. Stat. Ann. § 4781.04 has been amended to provide that the Department of Commerce, Division of Industrial Compliance (formerly, the Manufactured Homes Commission) shall adopt rules pursuant to govern the investigation of complaints concerning any complaints involving the conduct of any licensed manufactured housing installer or person installing manufactured housing without a license (deleting references to licensed manufactured housing dealers, licensed manufactured housing brokers; and manufactured housing salespersons).

The bill amends Ohio Rev. Code Ann. § 4781.17 to provide that each person applying for a manufactured housing dealer's license, manufactured housing broker's license or manufactured housing salesperson's license shall make application to the Department of Commerce, Division of Real Estate (formerly, the Manufactured Homes Commission).

The bill makes conforming amendments regarding this division of duties throughout the applicable sections.

The bill amends Ohio Rev. Code Ann. § 4781.26 to provide that the Division of Industrial Compliance (formerly, the Manufactured Homes Commission), subject to Chapter 119. of the Revised Code, shall adopt, and has the exclusive power to adopt, rules of uniform application throughout the state governing the review of plans, issuance of flood plain management permits, and issuance of licenses for manufactured home parks; the location, layout, density, construction, drainage, sanitation, safety, and operation of those parks; and notices of flood events concerning, and flood protection at, those parks.

The bill also makes conforming amendments to other sections regarding the regulation of manufactured home parks.

The bill provides that, on January 21, 2018, the Manufactured Homes Commission is abolished. The Department of Commerce is successor to, assumes the obligations, and assumes the authority of the Manufactured Homes Commission. Any business commenced but not completed by the Manufactured Homes Commission on that date shall be completed by the Department of Commerce. Any validation, right, cure, privilege, remedy, obligation, or liability is not lost or impaired solely by this abolishment and shall be administered by the Department of Commerce. Any action or proceeding pending on the effective date of this section is not affected by the abolishment of the Commission and shall be prosecuted or defended in the name of the Department. In all such actions and proceedings, the Department may be substituted as a party upon application to the court or other tribunal.

All rules, orders, and determinations made or undertaken by the Manufactured Homes Commission shall continue in effect as the rules, orders, and determinations of the Department of Commerce until modified, rescinded, or replaced. If necessary to ensure the integrity of the Administrative Code, the Director of the Legislative Service Commission shall renumber the rules relating to the Manufactured Homes Commission to reflect its abolishment pursuant to this section and the transfer of duties to the Department of Commerce pursuant to this act. Within one hundred eighty days after the effective date of this section, the Department of Commerce shall submit proposed rules to the Joint Committee on Agency Rule Review addressing fees and

fines previously assessed by the Manufactured Homes Commission pursuant to Chapter 4781. of the Revised Code and, where reasonably possible, shall reduce the amount and frequency of collection and assessment.

LEGISLATION

Oregon

Sale of park – Termination of occupancy

2017 OR H 2008. Enacted 6/6/2017. Effective immediately.

This bill amends Or. Rev. Stat. § 90.645 to provide that if a manufactured dwelling park, or a portion of the park that includes the space for a manufactured dwelling, is to be closed and the land or leasehold converted to a use other than as a manufactured dwelling park, and the closure is not required by the exercise of eminent domain or by order of federal, state or local agencies, the landlord may terminate a month-to-month or fixed term rental agreement for a manufactured dwelling park space by giving the tenant not less than 365 days' notice in writing and paying a tenant, for each space for which a rental agreement is terminated, one of the following amounts:

(i) $6,000 (formerly, $5,000) if the manufactured dwelling is a single-wide dwelling;

(ii) $8,000 (formerly, $7,000) if the manufactured dwelling is a double-wide dwelling; or

(iii) $10,000 (formerly, $9,000) if the manufactured dwelling is a triple-wide or larger dwelling.

The bill adds that the Office of Manufactured Dwelling Park Community Relations of the Housing and Community Services Department shall establish by rule a process to annually recalculate the amounts described above to reflect inflation.

The bill adds a new section to Or. Rev. Stat. §§ 90.842 to 90.850 to provide that, in addition to providing notice as required by ORS 90.842, upon sale of a manufactured dwelling park under ORS 90.842 to 90.850, or upon any sale, transfer, exchange or other conveyance of a manufactured dwelling park described in ORS 90.848, the owner shall give notice of the conveyance to the Office of Manufactured Dwelling Park Community Relations stating:

(1) The number of vacant spaces and homes in the manufactured dwelling park;

(2) If applicable, the final sale price of the manufactured dwelling park;

(3) The date the conveyance became final; and

(4) The name, address and telephone number of the new owner.

The bill amends Or. Rev. Stat. § 62.809 to provide that, if title to a manufactured dwelling located in the park of a cooperative is transferred to a lienholder, and a buyer of the manufactured dwelling from the lienholder or from a person that acquired title from the lienholder does not become a member of the cooperative within 12 months after title is transferred to the lienholder, the owner of the manufactured dwelling must remove the manufactured dwelling from the park of the cooperative.

An owner of a manufactured dwelling is not required to remove the manufactured dwelling as described above if the cooperative agrees with the owner in writing to:

(A) Waive or extend the deadline by which the buyer or subsequent buyer must remove the manufactured dwelling; or

(B) Store the manufactured dwelling on the space for a specified period of time.

Currently, Or. Rev. Stat. § 62.813 provides that, if a member or the cooperative terminates the member's occupancy in the park or membership in the cooperative, and the member fails to move or sell the manufactured dwelling, a lienholder that has foreclosed on the lien on the manufactured dwelling may:

(a) Remove the manufactured dwelling from the park after satisfying any obligation to the cooperative;

(b) Subject to subsection (3) of this section, sell the manufactured dwelling; or

(c) Require the cooperative to enter into a storage agreement that allows the lienholder to store the manufactured dwelling on the space for up to 12 months if the lienholder pays the space rent and reasonably maintains the manufactured dwelling and space.

This bill adds that a lienholder and a cooperative that are subject to a storage agreement under subsection (c), above, may agree in writing to extend the term of the agreement beyond 12 months.

LEGISLATION
Oregon
Housing Choice Landlord Guarantee Program

2017 OR H 2944. Enacted 6/8/2017. Effective 8/1/2017.

This bill amends Or. Rev. Stat. § 456.378 to provide that landlords that are eligible for assistance under the Housing Choice Landlord Guarantee Program must obtain a judgment against the tenant, following a hearing in which the landlord proves the amount of damages (adding, "following a hearing in which the landlord proves the amount of damages"), in either the small claims department of a circuit court or a circuit court for the county in which the property is located. Assistance is limited to reimbursement for only those amounts in the judgment that are related to property damage, unpaid rent or other damages (as specified).

The bill also repeals Or. Rev. Stat. § 456.380, Tenant responsibility for payment for assistance paid to landlord pursuant to Housing Choice Landlord Guarantee Program. This section had provided that, when a landlord is determined to be eligible to receive assistance under ORS 456.378, the Housing and Community Services Department shall require the responsible tenant to repay the full or a partial amount of any assistance paid to the landlord and shall offer the responsible tenant a reasonable repayment agreement that provides for repayment by the tenant to the department of the full or a partial amount of the assistance paid to the landlord. Amounts repaid by tenants under this section must be deposited into the Housing Choice Landlord Guarantee Program Fund created in ORS 456.385. This repeal is effective immediately.

LEGISLATION
Oregon
Termination – Removal

2017 OR S 277. Enacted 6/14/2017. Effective immediately.

This bill increases the notice period for termination of rental agreements and removal of manufactured dwellings.

The bill amends Or. Rev. Stat. § 90.505 to add that "Deterioration":

(A) Includes a collapsing or failing staircase or railing, one or more holes in a wall or roof, an inadequately supported window air conditioning unit, falling gutters, siding or skirting, or paint that is peeling or faded as to threaten the useful life or integrity of the siding.

(B) Does not include aesthetic or cosmetic concerns.

"Disrepair":

(A) Means the state of being in need of repair because a component is broken, collapsing, creating a safety hazard or generally in need of maintenance.

(B) Includes the need to correct a failure to conform with applicable building and housing codes at the time of:

(i) Installation of the manufactured dwelling or floating home on the site.

(ii) Making improvements to the manufactured dwelling or floating home following installation.

The bill amends Or. Rev. Stat. § 90.632 to provide that a landlord may terminate a month-to-month or fixed term rental agreement and require the tenant to remove a manufactured dwelling or floating home from a facility, due to the physical condition of the exterior of the manufactured dwelling (adding, "exterior of the") or floating home, only by complying with this section and ORS 105.105 to 105.168. A termination shall include removal of the dwelling or home.

The bill provides that, except as otherwise provided, if the exterior of the tenant's dwelling or home (adding, "exterior of the") is in disrepair or is deteriorated, a landlord may terminate a rental agreement and require the removal of a dwelling or home by giving to the tenant not less than 60 (formerly, 30) days' written notice before the date designated in the notice for termination.

The bill adds that if the disrepair or deterioration of the manufactured dwelling or floating home creates a risk of imminent and serious harm to dwellings, homes or persons within the facility, a landlord may terminate a rental agreement and require the removal of the dwelling or home by giving to the tenant not less than 30 days' written notice before the date designated in the notice for termination.

The notice required must:

(a) State facts sufficient to notify the tenant of the specific disrepair or deterioration that is the cause or reason (formerly, "the causes or reasons) for termination of the tenancy and removal of the dwelling or home;

(b) State that the tenant can avoid termination and removal by correcting the cause for termination and removal within the notice period;

(c) If reasonably known by the landlord, describe specifically what repairs are required to correct the disrepair or deterioration that is the cause for termination (formerly, "describe what is required to correct the cause for termination;");

(d) Describe the tenant's right to give the landlord a written notice of correction, where to give the notice and the deadline for giving the notice in order to ensure a response by the landlord, all as provided by this section; and

(e) Describe the tenant's right to have the termination and correction period extended as provided this section.

The bill amends Or. Rev. Stat. § 90.680 to provide that, if a landlord requires a prospective purchaser to submit an application for occupancy as a tenant, the landlord shall provide, upon request from the purchaser, a copy of the application. At the time that the landlord gives the prospective purchaser an application, the landlord shall also give the prospective purchaser:

(A) Copies of the statement of policy, the rental agreement and the facility rules and regulations, including any conditions imposed on a subsequent sale, all as provided by Or. Rev. Stat. § 90.510;

(B) Copies of any outstanding notices given to the tenant under Or. Rev. Stat. § 90.632;

(C) A list of any disrepair or deterioration of the manufactured dwelling or floating home;

(D) A list of any failures to maintain the space or to comply with any other provisions of the rental agreement, including aesthetic or cosmetic improvements; and

(E) A statement that the landlord may require a prospective purchaser to complete repairs, maintenance and improvements as described in the notices and lists provided under subparagraphs (B) to (D) of this paragraph.

The bill provides that a tenant who has received a notice pursuant to Or. Rev. Stat. § 90.632 may sell the tenant's dwelling or home in compliance with this section during

the notice period. The tenant shall provide a prospective purchaser with a copy of any outstanding notice given to the tenant under Or. Rev. Stat. § 90.632 prior to a sale. The bill deletes: "The landlord may also give any prospective purchaser a copy of any such notice. The landlord may require as a condition of tenancy that a prospective purchaser who desires to leave the dwelling or home on the rented space and become a tenant must comply with the notice within the notice period consistent with Or. Rev. Stat. § 90.632."

The bill adds that the following applies to a landlord that accepts a prospective purchaser as a tenant under this section:

(a) Notwithstanding any waiver given by the landlord to the previous tenant, the landlord may require the new tenant to complete the repairs, maintenance and improvements described in the notices provided under this section.

(b) Notwithstanding Or. Rev. Stat. § 90.412, if the new tenant fails to complete the repairs, maintenance and improvements described in the notices provided within six months after the tenancy begins, the landlord may terminate the tenancy by giving the new tenant the notice required under Or. Rev. Stat. §§ 90.630 or 90.632.

The bill amends the form for a residential eviction complaint in Or. Rev. Stat. § 105.124 by adding an option providing that the landlord is entitled to possession of the property because of: 60-day notice with stated cause. Or. Rev. Stat. § 90.632.

The bill provides that the amendments to Or. Rev. Stat. §§ 90.505, 90.632 and 90.680 apply to:

(1) Rental agreements for fixed term tenancies entered into or renewed on or after the effective date of the act; and

(2) Rental agreements for month-to-month tenancies in effect on or after the effective date of the act.

LEGISLATION

Texas

Municipal regulation – Non-conforming use

2017 TX S 1248. Enacted 6/12/2017. Effective 9/1/2017.

This bill relates to municipal regulation of manufactured home communities.

The bill adds Tex. Loc. Gov't. Code Ann. § 211.018, CONTINUATION OF LAND USE REGARDING MANUFACTURED HOME COMMUNITIES, to provide that the governing body of a municipality may not require a change in the nonconforming use of any manufactured home lot within the boundaries of a manufactured home community if:

(1) the nonconforming use of the land constituting the manufactured home community is authorized by law; and

(2) at least 50 percent of the manufactured home lots in the manufactured home community are physically occupied by a manufactured home used as a residence.

Requiring a change in the nonconforming use includes:

(1) requiring the number of manufactured home lots designated as a nonconforming use to be decreased; and

(2) declaring that the nonconforming use of the manufactured home lots has been abandoned based on a period of continuous abandonment of use as a manufactured home lot of any lot for less than 12 months.

A manufactured home owner may install a new or used manufactured home, regardless of the size, or any appurtenance on a manufactured home lot located in a manufactured home community for which a nonconforming use is authorized by law, provided that the manufactured home or appurtenance and the installation of the manufactured home or appurtenance comply with:

(1) nonconforming land use standards, including standards relating to separation and setback distances and lot size, applicable on the date the nonconforming use of the land constituting the manufactured home community was authorized by law; and

(2) all applicable state and federal law and standards in effect on the date of the installation of the manufactured home or appurtenance.

A municipality that prohibits the construction of new single-family residences or the construction of additions to existing single-family residences on a site located in a designated floodplain may prohibit the installation of a manufactured home in a manufactured home community on a manufactured home lot that is located in an equivalently designated floodplain.

The bill also adds Tex. Loc. Gov't. Code Ann. § 214.906, REGULATION OF MANUFACTURED HOME COMMUNITIES, to provide that, notwithstanding any other law, the governing body of a municipality may not regulate a tract or parcel of land as a manufactured home community, park, or subdivision unless the tract or parcel contains at least four spaces offered for lease for installing and occupying manufactured homes.

LEGISLATION

Texas

Representation – Eviction appeals

2017 TX H 3879. Enacted 6/15/2017. Effective 9/1/2017.

This bill amends Tex. Prop. Code Ann. § 24.011 to add that, in an appeal of an eviction suit for nonpayment of rent in a county or district court, an owner of a multifamily residential property may be represented by the owner's authorized agent, who need not be an attorney, or, if the owner is a corporation or other entity, by an employee, owner, officer, or partner of the entity, who need not be an attorney.

DEFAULT SERVICING

CASE LAW

Eviction

CASE NAME: *Brobst v. Crossett*
DATE: *05/31/2017*
CITATION: *United States District Court, E.D. Pennsylvania. Slip Copy. 2017 WL 2377729*

The plaintiffs filed suit raising various federal and state law claims in connection with real property on which the plaintiffs had been living for some period of time, including while they cared for Brobst, Jr.'s disabled brother. The plaintiff's brother had been granted a life estate in the property by their mother. Four days after the brother's death, Brobst, Sr. sent the plaintiffs an eviction notice. Thereafter, Brobst, Sr. filed a Complaint in Ejectment and the court ultimately granted Brobst, Sr.'s motion for summary judgment as to legal title of the premises.

The defendants filed for an ex-parte Writ of Possession and for the sheriff to forcibly evict the plaintiffs from the property, bar them from entering their mobile homes on the property, or retrieving their personal property.

The Court denied the defendants' motion to dismiss the plaintiff's claims pursuant to 42 U.S.C. § 1983 for violations of their Fourteenth Amendment due process rights and their Fourth Amendment rights against search and seizure, as well as a related claim for attorneys' fees pursuant to 42 U.S.C. § 1988. The Court found that the plaintiffs' § 1983 claims were based on the defendants' alleged failure to comply with all the necessary Pennsylvania rules relating to notice in eviction proceedings, and not the ejectment statute or the state court ejectment proceedings. Also, the plaintiffs were asserting Fourth Amendment claims for an unlawful seizure of their personal property and the mobile homes in which they alleged that they had a possessory interest.

The plaintiffs based their claims on the lack of notice as to the "forcible, double secret eviction," not the ejectment action.

The Court also found that the Rooker-Feldman doctrine did not apply to bar the plaintiffs' claims. The plaintiffs' claims were premised on the way in which the defendants obtained a writ that started the eviction proceeding, not whether they were permitted to begin proceedings to evict the plaintiffs based on the judgment in state court or whether the state court decision was correct.

The Court did dismiss the state law claims based on the Pennsylvania Fair Credit Extension Uniformity Act, the Pennsylvania Unfair Trade Practices and Consumer Protection Law, the Landlord Tenant Act, Civil Conspiracy and Wrongful Use of Civil Proceedings.

However, the Court refused to dismiss the claim for intentional infliction of emotional distress.

The Court also denied the motion to dismiss as to abuse of process, finding that the plaintiffs alleged that the defendants both purposely failed to provide notice in connection with the eviction proceedings and did so with bad intentions.

Finding that it was, for now, sufficient that the plaintiffs alleged that the defendants entered their property, as opposed to "the property," during an unlawful eviction proceeding undertaken without the required notice, the motion to dismiss the trespass claim was denied.

The Court further found that, because it was not clear whether the plaintiffs' mobile homes were permanently affixed to the land such that they were realty, or whether they were still movable and therefore considered personalty, the Court could not determine whether the mobile homes, or only their contents, were chattels which could be the subject of a conversion claim. The motion to dismiss that claim was also denied.

CASE LAW

Foreclosure – HOA lien

CASE NAME: *Bourne Valley Court Trust v. Wells Fargo Bank, NA*
DATE: *06/26/2017*
CITATION: *Supreme Court of the United States --- S.Ct. ----. 2017 WL 1300223*

On June 26, 2017, the United States Supreme Court denied the petition for writ of certiorari in the matter of *Bourne Valley Court Trust v. Wells Fargo Bank, NA*, United States Court of Appeals, Ninth Circuit. --- F.3d ---. 2016 WL 4254983.

In that case, the purchaser of property that was subject to an HOA foreclosure sale to collect unpaid HOA assessments brought an action seeking to quiet title and a declaration against Wells Fargo, the mortgage lender, as holder of first deed of trust on property. The district court held that the HOA's foreclosure extinguished Wells Fargo's interest in the Property. Wells Fargo appealed.

The Court of Appeals held that the "opt-in" notice scheme in Nev. Rev. Stat. § 116.3116 et seq., which required a homeowners' association to alert a mortgage lender that it intended to foreclose only if the lender had affirmatively requested notice, facially violated the lender's constitutional due process rights under the Fourteenth Amendment to the Federal Constitution.

Further, the "state action" requirement for purposes of constitutional due process had been met, in that the Nevada legislature's enactment of the statute governing foreclosure of liens by a homeowners' association constituted "state action."

LEGISLATION
Maryland
Transfers – Recording tax

2017 MD H 469. Enacted 5/4/2017. Effective 7/1/2017.

This bill adds new subsection (GG) to Md. Code Ann., Tax-Prop. § 12-108 to provide that an instrument of writing that transfers residential real property is not subject to recordation tax if:

(1) the property is subject to a purchase money mortgage or purchase money deed of trust;

(2) the mortgagor filed a petition for bankruptcy under title 11, chapter 7 of the united states code;

(3) the mortgagor filed with the bankruptcy court a statement of intention to surrender the property;

(4) the property was the principal residence of the mortgagor prior to the surrender of the property in bankruptcy; and

(5) the property is transferred from the mortgagor to the holder of the purchase money mortgage or purchase money deed of trust.

The bill amends Md. Code Ann., Tax-Prop. § 13-207 to provide that an instrument of writing is not subject to transfer tax to the same extent that it is not subject to recordation tax under § 12-108(GG) of this article (transfer of principal residence surrendered in bankruptcy).

The bill also adds Md. Code Ann., Tax-Prop. § 13-413 to provide that an instrument of writing that is exempt from recordation tax under § 12-108(gg) of this article (transfer of principal residence surrendered in bankruptcy) is not subject to the county transfer tax.

LEGISLATION
North Carolina
Default charges

2017 NC S 577. Enacted 6/26/2017. Effective immediately.

This bill amends N.C. Gen. Stat. § 25A-29 re: consumer credit installment sale contract default charges, to provide that if any installment is past due for 10 days or more according to the original terms of the consumer credit installment sale contract, a default charge may be made in an amount of fifteen dollars ($15.00). A default charge may be imposed only one time for each default.

Formerly, the default charge was in an amount not to exceed five percent (5%) of the installment past due or six dollars ($6.00), whichever is the lesser.

INSTALLATION

LEGISLATION
Louisiana
Standards – Violations

2017 LA H 471. Enacted 6/14/2017. Effective 8/1/2017.

This bill amends La. Stat. Ann. § 911.30 to provide that a serial number shall be stamped by the manufacturer on the header plate or front cross (adding, "header plate or") member of the frame of a manufactured home so that it can be easily read.

La. Stat. Ann. § 911.36, has been amended to add that all costs incurred by the Louisiana Manufactured Housing Commission, including reasonable attorney fees, may be borne by the person or licensee who has been found in violation of the provisions of the Uniform Standards Code for Manufactured and Modular Housing, or any provision of this Part or Part XIV-B of this Chapter, or any rule or

regulation adopted and promulgated by the commission in accordance with the Administrative Procedure Act.

The bill amends La. Stat. Ann. § 911.39 to provide that whoever is found guilty of violating the Code or any manufactured or modular housing provision of this Part, Part XIV-B of this Chapter, any rule, or any regulation or final order issued thereunder shall be liable to the state of Louisiana through the commission for a civil penalty not in excess of two thousand five hundred dollars (formerly, $1,000) for each violation. The bill adds that if the commission determines a violation was intentional or the violator is a habitual offender, the commission may double the civil penalty up to five thousand dollars for each violation.

The bill amends the definition of "manufactured home" or "manufactured housing" in La. Stat. Ann. § 912.3 to delete the provision that those terms apply to factory-built, residential dwellings that are mounted on a chassis.

The bill amends La. Stat. Ann. § 912.5 to require the submission of a consumer complaint form provided by the commission, before an owner undertakes any repair himself or institutes any action for breach of warranty.

The bill amends La. Stat. Ann. § 912.25, Installation standards for used manufactured homes in hurricane zones, to provide that when the manufacturer's printed setup requirements are not available for the applicable wind zone, the following guidelines are to be used:

Longitudinal (formerly, Diagonal) ties only are required at each end of each unit. The minimum number of ties at a minimum angle of forty-five degrees from vertical is three each for Zone II and four each for Zone III.

All designated tie points on the perimeter side walls shall be equipped with vertical and diagonal ties with stabilizer devices. When tie points are not designated on the side walls, vertical and diagonal ties with stabilizer devices shall be spaced a maximum of ten (formerly, twelve) feet for Zone I, eight feet for Zone II, and six feet six inches for Zone III.

Amended La. Stat. Ann. § 912.27 now provides that the commission shall, by rule, provide for the licensure of transporters of manufactured and modular homes with a license fee of one hundred twenty-five dollars per license. The bill further provides that a licensed installer shall be allowed to perform the functions of a transporter without having to obtain that license.

The bill amends La. Stat. Ann. § 912.28 to provide that any installer, transporter, or other person (adding, transporter) who performs any work covered as described in this Part without the appropriate license or who installs a manufactured or modular home in a manner contrary to the requirements of this Part shall be in violation of the provisions of this Part. All such violators shall be subject to the penalty of revocation or suspension of their license or a civil fine of up to two thousand five hundred dollars (formerly, $1,000), or both, for each violation. The bill adds that if the commission determines a violation was intentional or the violator is a habitual offender, then the commission may double the civil penalty up to five thousand dollars for each violation.

LEGISLATION

Maine

Warranties – Definition of installation

2017 ME S 498. Enacted 6/14/2017. Effective 10/20/2017 (projected).

This bill makes amendments throughout Me. Stat. Title 10 to replace “mobile home” with “manufactured home” and “mobile home park” with ‘manufactured housing community.”

The bill amends Me. Stat. tit. 10, § 1404. first paragraph, to provide that a statutory warranty is hereby established under which both the manufacturer and the dealer certify that to the best of their knowledge, the new manufactured home is free from any substantial

defects in the approved building systems, materials and workmanship (adding, “the approved building systems”).

The bill amends Me. Stat. tit. 10, § 1404, sub-§ 3 to provide that the manufacturer and dealer are jointly and severally liable to the consumer for the fulfillment of the terms of warranty, and the consumer may notify either one or both of the need for appropriate corrective action in instances of substantial defects in the approved building systems, materials or workmanship (adding, “the approved building systems”).

The bill amends Me. Stat. tit. 10, § 1404-A to provide:

1. Approved building systems, materials and workmanship. That the installation is free from any substantial defects in the approved building systems, materials or workmanship (adding, “the approved building systems”);

2. Corrective action. That the installer or the installer and the dealer, when the dealer is responsible for the installation, shall take appropriate corrective action at the site of the manufactured housing in instances of substantial defects in the approved building systems, materials or workmanship (adding, “the approved building systems”) that become evident within one year from the date of the installation of the manufactured housing if the buyer or the buyer's transferee gives written notice of the defects to the installer or the installer and the dealer, when the dealer is responsible for installation, at the installer's or the installer's and the dealer's business addresses no later than one year and 10 days after the date of installation.

The bill amends Me. Stat. tit. 10, § 9001, sub-§ 1, paragraph D, to provide that manufactured housing may present hazards to the health, life and safety of persons and to the safety of property unless properly manufactured because vital parts such as, including but not limited to heating, plumbing and, electrical and structural systems (adding, “and structural”), are concealed and defects may not be readily ascertainable when inspected by a purchaser. Accordingly, it is the policy and purpose of this State to provide protection to the public against those possible hazards.

The bill amends Me. Stat. tit. 10, § 9002, sub-§ 5 to provide that "Inspection agency" means an approved person or organization, public or private, determined by the board to be qualified by reason of facilities, personnel and demonstrated ability and independence of judgment to provide for inspection and approval of the design, construction or installation (adding, “design”) of manufactured housing in compliance with the standards and the rules adopted in accordance with this Act.

The bill amends Me. Stat. tit. 10, § 9002, sub-§ 6 to provide that "Installation" means:

A. The placing (formerly, “affixing”) of manufactured housing on a foundation or supports at a building site; and

B. The assembly and fastening of structural components of manufactured housing, including the completed roof system, as specified by the manufacturer's installation instructions and in accordance with the rules of the board.

For manufactured housing, "installation" also includes the connection to existing services, including but not limited to (adding, “services, including but not limited to”) electrical, oil, gas, water, sewage and similar systems that are necessary for the use of the manufactured housing for dwelling purposes.

The bill amends Me. Stat. tit. 10, § 9008, sub-§ 1 to provide that a person may not manufacture, sell, broker, distribute, install or service any manufactured housing in this State regardless of the destination of the housing without first obtaining a license from the Manufactured Housing Board as required in this chapter (adding, “regardless of the destination of the housing”).

The bill amends Me. Stat. tit. 10, § 9011, sub-§ 1 to provide that the board may, upon complaint or probable

cause (adding, “complaint or”), inspect the manufactured housing, manufacturing facilities, a licensee's business facilities or such records as may be necessary to verify whether a violation has occurred.

The bill amends Me. Stat. tit. 10, § 9021, sub-§ 1 to provide that any person who engages in the business of manufacturing, brokering, distributing, selling, installing or servicing manufactured housing, regardless of the destination of the housing (adding, “regardless of the destination of the housing”), must first obtain a license issued by the board.

The bill amends Me. Stat. tit. 10, § 9022, sub-§ 3 to provide that licensed mechanics may install or service HUD-code homes and pre-HUD-code homes (formerly, “manufactured housing”) and are exempt from any other licensing requirements of any state or political subdivisions, but must obtain any permits required.

The bill amends Me. Stat. tit. 10, § 9022, sub-§ 4 to provide that licensed installers may install and service state-certified modular homes (formerly, “manufactured housing”) and are exempt from any other licensing requirements of any state or political subdivisions but must obtain any permits required.

(Note: “state-certified modular homes” are those units that the manufacturer certifies are constructed in compliance with the State's Manufactured Housing Act and regulations, meaning structures, transportable in one or more sections, that are not constructed on a permanent chassis and are designed to be used as dwellings on foundations when connected to required utilities, including the plumbing, heating, air-conditioning or electrical systems contained therein. Me. Stat. tit. 10, § 9022(7)(B)).

The bill amends Me. Stat. tit. 10, § 9044, sub-§ 3 to provide that qualification of an inspection agency must (formerly, “shall”) be suspended by the board if, after appropriate notice and administrative hearing, it determines the agency is no longer qualified as meeting the standards adopted pursuant to subsection 1. The board may request information and documentation and (adding, “request information and documentation and”) may conduct such reviews and inspections (adding, “and inspections”) of the work of a qualified agency as the board determines are necessary to reasonably ensure continuing compliance of the qualified agency with the standards adopted.

The bill amends Me. Stat. tit. 10, § 9047, sub-§ 3 to provide that the licensed person (adding, “licensed”) responsible for noncompliance with the standards adopted by the board or for the creation of a safety hazard shall promptly make or cause to be made (formerly, “promptly effect”) such repairs and modifications as may be necessary to correct the nonconformance or eliminate the safety hazard. Any licensed person (adding, “licensed”) who fails to make these repairs or modifications is subject to section 9009.

The bill amends Me. Stat. tit. 10, § 9061, sub-§ 6 to provide that "manufacturer" means any person engaged in manufacturing or assembling manufactured homes, regardless of the destination of the homes (adding, “regardless of the destination of the homes”), including any person engaged in importing homes for resale.

The bill amends Me. Stat. tit. 10, § 9084, 2nd paragraph, to provide that when any applicant is found not in compliance with the requirements of this subchapter or rules adopted and approved pursuant to section 9085 or section 9088, subsection 1, the board may refuse issuance of the initial license but may (formerly, “shall”) issue a conditional license with such terms and conditions as required by the board (adding, “with such terms and conditions as required by the board”), except when conditions are found that present a danger to the health and safety of the public. A conditional license may not exceed 90 days. Failure by the conditional licensee to meet the terms and conditions (adding, “terms and”) specified permits the board to void the conditional license.

BULLETIN

New York Housing Association, Inc.

24 CFR 3285.3 – US HB 1699

From Nancy Geer, Executive Director.

It is important to the industry's future that you act on two important issues:

On Wednesday, June 21, 2017, HUD published in the Federal Register its Interpretive Bulletin for Model Manufactured Home Installation Standards Foundation Requirement in Freezing Temperature Areas under 24 CFR 3285.3(2C6). HUD is intruding into state function, reinterpreting regulations to the detriment of long-standing accepted building practices and implementing rules that unnecessarily limit consumer choice and increase costs to the consumer. Please read the proposed rule carefully. PUBLIC COMMENTS ARE DUE AUGUST 21, 2017.

We need your support by contacting your Congress Member and asking him/her to become a co-sponsor of HR 1699. Consumers are being denied financing for certain manufactured homes, particularly lower priced, more affordable homes. It is easy to contact your Congress Member through MHI's website: www.manufacturedhousing.org. Once there, click on the Advocacy & Issues icon and then on MHI's Action Center. Go to the HR 1699 page and fill in your email address and other information. You will see the letter to your Congress Member which can be edited by you or sent as is and with one click you have completed the task. Please do this today!

BULLETIN

Texas

Notices of installation

Texas Department of Housing and Community Affairs, Manufactured Housing Division - NOTICE OF INSTALLATION TIMEFRAMES.

A recent review of installations reported has revealed a substantial number of Notices of Installations (aka Form T) submitted to the Department beyond the established timeframes as required by Title 10, Section 80.33(g) of the Texas Administrative Code, which states:

For each installation completed, the contracting installer must complete a Notice of Installation and submit the original, signed form with the required fee to the Department no later than seven (7) days after the installation is completed, but not later than three (3) days for provisional installers. A single payment may be made when multiple forms are submitted.

In the Department's continued efforts to promote self-compliance through education, license holders will be provided with a monthly summary of any Notices of Installation received late for the months of June and July 2017, giving ample opportunity to correct any internal processes attributing to the problem without penalty.

However, effective September 1, 2017, any installations not reported within the established timeframes will be subject to administrative action including a monetary fine, suspension and/or revocation of the license.

NEWSLETTER

HUD

Manufactured Home Installation Program

HUD's *Manufactured Housing Newsletter*, June 2017.

Update on Manufactured Home Installation Program.

The Installation Program performed several installation monitoring inspections, worked to improve manufactured housing installation instructions, approved a new installer training program, met with industry leaders in multiple states, and welcomed the state of Michigan into the program in May.

So far in 2017, qualified monitoring inspectors have examined 37 homes in Illinois and Maryland.

From June to September this year, HUD has scheduled inspections in Montana, South Dakota, Wyoming, and Nebraska with more to be added. Common inspection discoveries continue to be improper grading around the home, improper cap blocks, tie downs that exceed 60 degrees, lack of approved alternative foundation designs (foundation plans not found in the manufacturer's instruction manual) as well as lack of proper reporting to HUD upon home sale and installation. This year's inspections have also revealed failure to extend condensation, hot water pan and over flow valves, and dryer lines to the perimeter of the home.

HUD is excited to announce a new training program that has been approved for installers of manufactured homes. The Manufactured Housing Professional Training by Mark Conte was approved by HUD in April of this year and will provide in-person training to both small and large groups. For information on these trainings, please visit the Installation Program website, www.manufacturedhousinginstallation.com.

Installers who work in Michigan must receive their HUD Installer License by October 1, 2017, and must comply with reporting requirements.

In addition to managing the state of Michigan's Installation Program, HUD will also manage the responsibilities of the State Administrative Agency (SAA) and the Dispute Resolution Programs (DRP) for the state.

LENDING

LEGISLATION

Oregon

Taxes - Affordable housing lenders

2017 OR H 2315. Enacted 6/14/2017. Effective 10/6/2017.

This bill relates to a tax credit for affordable housing lenders.

The bill amends Or. Rev. Stat. § 317.097 to provide that the corporate excise tax credit allowed to lenders that finance affordable housing is not barred by receipt of housing vouchers by tenants.

These provisions apply to tax years beginning on or after January 1, 2018.

LICENSING

ADOPTED RULES

Georgia

Examination fees – Recod keeping

Effective 7/19/2017, these rules amend Ga. Comp. R. & Regs. 80-5-1-.03, Examination, Supervision, Registration, Application and Other Fees for Financial, Institutions and Nonbank Subsidiaries of Banks or Holding Companies, to provide that financial service providers shall pay an examination fee at the rate of $65 per examiner-hour but not less than $500 unless such examination is conducted in conjunction with another ongoing examination, in which case there shall be no minimum charge.

The rules amend regulations re: Residential Mortgage Brokers and Lenders, Ga. Comp. R. & Regs. 80-11-3-.01, Administrative Fines, to add that any person who is required to be licensed or registered under O.C.G.A. Title

7, Chapter 1, Article 13 as a mortgage lender who fails to maintain a servicer file for each mortgage loan it services, as required by Rule 80-11-6-.04(1)(b), or who fails to have all required documents in such file, shall be subject to a fine of $1,000 per file not maintained or not accessible, or per file not containing required documentation.

Chapter 80-11-6, Mortgage Servicing, Ga. Comp. R. & Regs. 80-11-6-.01 through 80-11-6-.04 has been added. The new rules include: Definitions; Mortgage Servicer Standards; Mortgage Servicer Location Requirements and Minimum Retention Periods; and Minimum Requirements for Books and Records.

LEGISLATION

Louisiana

Transporters – Developers - Salespersons

2017 LA H 471. Enacted 6/14/2017. Effective 8/1/2017.

The major thrust of this bill is to include modular housing in provisions governing manufactured housing.

The bill also amends La. Stat. Ann. § 911.22 to add the definition of "transporter" to mean an individual who transports a manufactured or modular home to a site of installation but does not perform any blocking or anchoring of the home, except a transporter is allowed to put blocks under the hitch on the tongue of the frame.

The bill amends La. Stat. Ann. § 911.24 to add that all retailers and developers are required to have at least one licensed salesman.

The bill also requires that transporters show proof of continued and ongoing general liability insurance coverage of at least one hundred thousand dollars.

La. Stat. Ann. § 911.26 has been amended to provide that the powers and duties of the Louisiana Manufactured Housing Commission include the licensing of transporters and the authority to adopt rules governing the repairs or renovations of manufactured homes.

The bill amends La. Stat. Ann. § 911.30 to provide that a serial number shall be stamped by the manufacturer on the header plate or front cross (adding, "header plate or") member of the frame of a manufactured home so that it can be easily read.

La. Stat. Ann. § 911.36, has been amended to add that all costs incurred by the commission, including reasonable attorney fees, may be borne by the person or licensee who has been found in violation of the provisions of the Uniform Standards Code for Manufactured and Modular Housing, or any provision of this Part or Part XIV-B of this Chapter, or any rule or regulation adopted and promulgated by the commission in accordance with the Administrative Procedure Act.

The bill amends La. Stat. Ann. § 911.39 to provide that whoever is found guilty of violating the Code or any manufactured or modular housing provision of this Part, Part XIV-B of this Chapter, any rule, or any regulation or final order issued thereunder shall be liable to the state of Louisiana through the commission for a civil penalty not in excess of two thousand five hundred dollars (formerly, $1,000) for each violation. The bill adds that if the commission determines a violation was intentional or the violator is a habitual offender, the commission may double the civil penalty up to five thousand dollars for each violation.

The bill amends La. Stat. Ann. § 911.46 to add "or developer" to the provision that it is unlawful for a retailer or developer to set forth in any retail installment sales contract, chattel mortgage, or security agreement any down payment unless all of the down payment has actually been received by the retailer or developer at the time of execution of such document. If any part of the down payment is represented by a loan, trade-in, or any consideration other than cash, this fact shall be expressly set forth on the retail installment sales contract, chattel

mortgage, or security agreement. No amount of the cash down payment shall be from any rebate or other consideration received by or to be given to the consumer from the retailer or developer, or his respective agent.

(Note: "Developer" means any person, group of persons, firm, partnership, corporation, association, company, or legal entity who sells or offers for sale to the public a lot together with a manufactured home permanently installed and fixed on a foundation on the lot and designed as a single family residence. For purposes of this Part, developer shall include contractors and residential contractors as defined in R.S. 37:2157.

Developer shall not include an individual selling his personal residence, or a real estate broker or real estate salesman retained by a person to sell a manufactured home together with a lot on which the manufactured home has been installed and fixed on a foundation.)

The bill amends the definition of "manufactured home" or "manufactured housing" in La. Stat. Ann. § 912.3 to delete the provision that those terms apply to factory-built, residential dwellings that are mounted on a chassis.

The bill amends La. Stat. Ann. § 912.5 to require the submission of a consumer complaint form provided by the commission, before an owner undertakes any repair himself or institutes any action for breach of warranty.

The bill amends La. Stat. Ann. § 912.25, Installation standards for used manufactured homes in hurricane zones, to provide that when the manufacturer's printed setup requirements are not available for the applicable wind zone, the following guidelines are to be used:

Longitudinal (formerly, Diagonal) ties only are required at each end of each unit. The minimum number of ties at a minimum angle of forty-five degrees from vertical is three each for Zone II and four each for Zone III.

All designated tie points on the perimeter side walls shall be equipped with vertical and diagonal ties with stabilizer devices. When tie points are not designated on the side walls, vertical and diagonal ties with stabilizer devices shall be spaced a maximum of ten (formerly, twelve) feet for Zone I, eight feet for Zone II, and six feet six inches for Zone III.

Amended La. Stat. Ann. § 912.27 now provides that the commission shall by rule provide for the licensure of transporters of manufactured and modular homes with a license fee of one hundred twenty-five dollars per license. The bill further provides that a licensed installer shall be allowed to perform the functions of a transporter without having to obtain that license.

The bill amends La. Stat. Ann. § 912.28 to provide that any installer, transporter, or other person (adding, transporter) who performs any work covered as described in this Part without the appropriate license or who installs a manufactured or modular home in a manner contrary to the requirements of this Part shall be in violation of the provisions of this Part. All such violators shall be subject to the penalty of revocation or suspension of their license or a civil fine of up to two thousand five hundred dollars (formerly, $1,000), or both, for each violation. The bill adds that if the commission determines a violation was intentional or the violator is a habitual offender, then the commission may double the civil penalty up to five thousand dollars for each violation.

The bill amends La. Stat. Ann. § 912.52 to delete the provision that limited the authority of the Louisiana state administrative agent to oversight of remedial actions carried out by manufacturers and a manufacturer's handling of consumer complaints as to plants located within the state.

SALES

CASE LAW

Purchase - Intentional misrepresentation

CASE NAME: *DONALD D. HOLMES; GINA Y. KOPP, Plaintiffs-Appellants, v. WESTERN TITLE & ESCROW COMPANY, Defendant, and LLOYD RAGAN; GLENDA RAGAN, Defendants-Appellees*
DATE: *06/20/2017*
CITATION: *United States Court of Appeals, Ninth Circuit. --- Fed.Appx. ----. 2017 WL 2645590*

Donald D. Holmes and Gina Y. Kopp ("Appellants") appealed the district court's judgment in their diversity action against Lloyd and Glenda Ragan ("the Ragans"). Appellants alleged intentional misrepresentation and breach of contract under Oregon law in connection with their purchase of a mobile home from the Ragans.

The appeals court found that there was no error in entering judgment for the Ragans on Appellants' intentional-misrepresentation claim based on an alleged pre-sale statement that the home had no rodents or mold. The district court did not clearly err in finding that the Ragans lacked knowledge of rats or mold in the home at the time of the sale agreement and that the mold found after a storm was not in existence at the time of the sale agreement. The district court also did not clearly err in finding that Appellants did not rely on any statements by the Ragans regarding mold or rats when purchasing the home.

The Court also found that there was no error in entering judgment for the Ragans on Appellants' breach-of-contract claim. Because the Ragans lacked knowledge of rats in the home at the time of the sale agreement, there was no breach of a warranty of freedom from material defects or a breach of the implied covenant of good faith and fair dealing. Further, there was no written agreement regarding a sixty-day limit for repair of the storm damage, and any oral agreement to that effect would have violated the statute of frauds. Moreover, the duty of good faith and fair dealing did not require an assignment of the Ragans' insurance claim or a power of attorney to authorize Appellants to direct the home's repairs to their satisfaction.

Finally, the Court found that there was no error in entering judgment for the Ragans on the parties' claim and counterclaim for declaratory relief regarding $8,000 the Ragans placed in escrow pending completion of repairs. The district court did not clearly err in finding that the parties' escrow agreement did not include any time limit for the repairs, that the repairs were fully completed, and that Holmes said he would not hold the Ragans to any repair deadline.

Affirmed.

TAXES

LEGISLATION

Oregon

Property tax exemption

2017 OR H 2964. Enacted 6/14/2017. Effective 10/6/2017.

This bill relates to a property tax exemption for low-income single-unit housing.

The bill amends Or. Rev. Stat. § 307.651 to provide that:

"Qualified dwelling unit" means a dwelling unit that, at the time an application is filed pursuant to Or. Rev. Stat. § 307.667 (formerly," upon completion"), has a market value for the land and improvements of no more than 120 percent, or a lesser percentage as adopted by the governing body by resolution, of the median sales price of dwelling units located within the city.

"Single-unit housing" means a structure (formerly, a newly constructed structure) having one or more dwelling units that:

(a) Is, or will be, upon purchase, rehabilitation or completion of construction (formerly, "at the time that construction is completed"), in conformance with all local plans and planning regulations, including special or district-wide plans developed and adopted pursuant to Or. Rev. Stat. chapters 195, 196, 197 and 227.

(b) If newly constructed (formerly, "Is constructed on or after January 1, 1990, and"), is completed within two years after application for exemption is approved under Or. Rev. Stat. § 307.674 or before January 1, 2025, whichever is earlier.

(c) Is designed for each dwelling unit within the structure to be purchased by and lived in by one person or one family.

(d) Has one or more qualified dwelling units within the single-unit housing.

(e) Is not a floating home, as defined in Or. Rev. Stat. § 830.700, or a manufactured structure, as defined in Or. Rev. Stat. § 446.561, other than a manufactured home described in Or. Rev. Stat. § 197.307 (8)(a) to (f).

"Structure" does not include the land or any site development made to the land, as those terms are defined in ORS 307.010.

The bill amends Or. Rev. Stat. § 307.671 to provide that a city may approve an application made under Or. Rev. Stat. § 307.667 if it finds that:

(1) For a property that is an existing qualified dwelling unit, the qualified dwelling unit constitutes single-unit housing; or

(2) For a property that is a newly constructed qualified dwelling unit:

(a) The proposed qualified dwelling unit will constitute single-unit housing;

(b) The owner has agreed to include the design elements adopted under Or. Rev. Stat. § 307.657 (3) in the construction; and

(c) The construction will result in public benefits beyond the period of exemption.

The bill provides that a city may not approve an application for exemption under Or. Rev. Stat. § 307.674 on or after January 1, 2025.

Notwithstanding the date specified above, a qualified dwelling unit of single-unit housing that was granted exemption under Or. Rev. Stat. §§ 307.651 to 307.687 pursuant to an application approved under Or. Rev. Stat. § 307.674 before the date specified shall continue to receive the exemption for the period of time for which the exemption was granted.

LEGISLATION

Texas

Leases – Personal property taxes

2017 TX H 804. Enacted 6/1/2017. Effective 9/1/2017.

This bill amends subsection (d) of and adds subsections (e) through (g) to Tex. Tax Code Ann. § 41.413, Protest by Person Leasing Property, to provide that:

(d) a property owner shall timely send to a the person leasing the property under a contract whereby the person leasing tangible personal property is contractually obligated to reimburse the property owner for taxes imposed on the property a copy of any notice of appraised value of the property received by the property owner. The property owner must send the notice not later than the 10th day after the date the property owner receives the notice. Failure of the property owner to send a copy of the notice to the person leasing the property does not affect the time within which the person leasing the property may protest the appraised value. This subsection does not apply if the property owner and the person leasing the property have agreed

in the contract to waive the requirements of this subsection or that the person leasing the property will not protest the appraised value of the property.

(e) A person leasing property under a contract described by this section may request that the chief appraiser of the appraisal district in which the property is located send the notice described by Subsection (d) to the person. Except as provided by Subsection (f), the chief appraiser shall send the notice to the person leasing the property not later than the fifth day after the date the notice is sent to the property owner if the person demonstrates that the person is contractually obligated to reimburse the property owner for the taxes imposed on the property.

(f) A chief appraiser who receives a request under Subsection (e) is not required to send the notice requested under that subsection if the appraisal district in which the property that is the subject of the notice is located posts the appraised value of the property on the district's Internet website not later than the fifth day after the date the notice is sent to the property owner.

(g) A person leasing property under a contract described by this section may designate another person to act as the agent of the lessee for any purpose under this title. The lessee must make the designation in the manner provided by Section 1.111. An agent designated under this subsection has the same authority and is subject to the same limitations as an agent designated by a property owner under Section 1.111.

TITLING AND PERFECTION

Louisiana
Endorsement

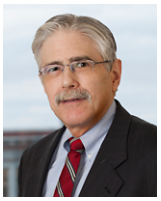
2017 LA H 432. Enacted 6/16/2017. Effective 8/1/2017.

This bill adds La. Stat. Ann. § 32:702(17) to provide that "authorized officer" means any officer of a federally insured financial institution operating in Louisiana who is designated to witness the endorsement of a seller, on behalf of a federally insured financial institution, for the purpose of executing the transfer of a titled motor vehicle or titled vehicle in accordance with the requirements of this Chapter. A federally insured financial institution may designate one or more officers to serve as authorized officers.

The bill also adds La. Stat. Ann. § 32:705 (B)(4) to provide that, for purposes of this Section, an "endorsement" means one of the following:

(a) The signature of the seller in the presence of an authorized officer, as defined in R.S. 32:702 (17), who shall verify the identity of the seller and who shall subscribe his name as a witness thereon, when the seller is transferring ownership to a purchaser who is granting a security interest in the vehicle to the federally insured financial institution that is making a secured loan to the purchaser.

(b) The federally insured financial institution shall provide the Department of Public Safety and Corrections, office of motor vehicles, with a separate document identifying the name and job title of the authorized officer for the purpose of verifying that the person signing as a witness is an authorized officer of that particular financial institution. This document or a copy thereof shall be attached to or included with each title presented to the department that is endorsed in the manner described in this Paragraph.



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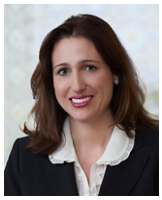

LAURA GRECO is a member in the consumer financial services, business law, and commercial litigation groups of the firm's Albany office. Laura represents manufactured housing lenders, banks, mortgage companies and other financial institutions in lawsuits involving all areas of consumer finance. Laura has experience dealing with claims that include federally regulated areas such as the Truth in Lending Act, Real Estate Settlement Procedures Act, Fair Credit Reporting Act, Fair Debt Collection Practices Act, and others, as well as representing clients in state and federal actions concerning the foreclosure and servicing procedures of mortgage servicers and lenders.

Find out more about Laura here:
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ABOUT MHI:

The Manufactured Housing Institute (MHI) is the only national trade organization representing all segments of the factory-built housing industry. MHI members include home builders, lenders, home retailers, community owners and managers, suppliers and 50-affiliated state organizations.

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ABOUT McGLINCHEY STAFFORD:

A leader in the manufactured housing and mortgage lending industries, McGlinchey Stafford represents 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.