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Three Ways the Legislature Has Redefined Consumer Litigation in West Virginia

By Nicholas P. Mooney II

The regular legislative session recently ended in West Virginia, and once again our Legislature has amended the West Virginia Consumer Credit and Protection Act, one of the primary statutes under which consumers sue creditors, collectors, and others.

For years, the Act stood substantially in its original form since its 1974 passage. From the late 1990s through 2015, consumers filed numerous lawsuits under the Act. Its statute of limitations provision (in some instances stretching as much as 31 years) and its penalty provision (as much as $4,800 per violation) made it a favorite among consumer attorneys. Consumers traditionally have filed suit under the Act in West Virginia far more often than they ever filed suit under the Fair Debt Collection Practices Act, Fair Credit Reporting Act, Telephone Consumer Protection Act, or other federal statutes.

Click **here** to read the entire article.

Consumer Financial Protection Bureau Warns Mortgage Servicers to Prepare for Assisting Homeowners in the Coming Months as Foreclosure Moratoriums Expire

"The Bureau will be paying particular attention to how mortgage servicers respond to borrower requests for loss mitigation assistance."

Why this is important: In a compliance bulletin released March 31, 2021 ("Bulletin"), the CFPB reports an estimated 800,000 borrowers will exit forbearance programs in September and October of 2021, many facing more permanent hardships and needing further loss mitigation options. In addition, many borrowers not in forbearance continue to be delinquent on their mortgages and need assistance. The Bureau warns that it will be watching. It intends to prioritize mortgage servicing oversight and will deploy its enforcement and supervision resources as needed. The Bulletin sets out eight oversight areas, ranging from providing understandable information to borrowers about their options, to avoiding unreasonably long hold times on the phone, to promoting timely and consistent evaluations.

For mortgage servicers, now is the time to estimate the numbers and possibly identify the loans that will be ending a forbearance period, or are among the loans that likely will be looking for assistance. This can determine the additional headcount needed to service these loans. **The eight oversight areas identified in the Bulletin would allow mortgage servicers to create metrics (if they do not already exist) that can assist the servicer to monitor its performance in responding to requests for loss mitigation.** And, of course, it is important to document all requests for loss mitigation assistance and responses. --- Debra Lee Allen

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CFPB Proposes Plan To Prevent Foreclosure Wave. Is It Enough?

"A new rule proposal from the Consumer Financial Protection Bureau would create a new pre-eviction review period to grant millions of Americans more time to figure out payment options before Covid-19 federal mortgage protections expire at the end of June."

Why this is important: Citing industry data, the CFPB predicts nearly 1.7 million borrowers with federally backed mortgages will exit forbearance programs later this year and said that more mortgage holders are behind on payments today than at any time since 2010. The CFPB proposal would create a new "pre-foreclosure review" period where foreclosures are prohibited until January 1, 2022.

The new rule would apply to both federally-backed and private mortgages for primary residences. **While this proposal appears to assist struggling homeowners, some housing advocates question whether it is enough, while others warn that it is not the right solution.** --- Bryce J. Hunter

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Unions Demand Student Loan Cancellation; Argue Public Service Loan Forgiveness is Broken

"A broad array of unions sent a letter to Education Secretary Miguel Cardona calling for the Biden administration to fully forgive student loan debt for those who have worked in public service jobs for more than 10 years."

Why this is important: Under the Public Service Loan Forgiveness Program ("PSLF"), the balance of interest and principal due on any eligible Federal Direct Loan should be cancelled for a borrower who has made 120 monthly payments, is employed in a public service job at the time of such forgiveness, and has been employed in a public service job during the period in which the borrower makes each of its payments. Since 2017, forgiveness under PSLF has been extremely rare. As of March 2019, only 1 percent of applications for loan forgiveness had been approved.

The National Education Association, along with 14 other unions representing more than 10 million public servants, urged the United States Secretary of Education, Miguel Cardona, to take action and fulfil his confirmation hearing promise to commit all the tools at his disposal to provide student loan borrowers with immediate relief. Specifically, the unions demand that the Department of Education ("DOE") conducts a 90-day audit on all student loan accounts of every potentially eligible borrower working in public service, and cancels the student loan debt of all service workers with a decade or more of service. Forgiveness would apply to all student loans for public service irrespective of whether the borrowers qualify under the PSLF, and would provide relief to public servants who serve on the front lines during the COVID-19 pandemic, have detrimentally relied on the government's representation of loan forgiveness, and have been denied PSLF eligibility due to the program's failure and mismanagement.

Despite these laudable intentions, it's unlikely that the DOE will cancel all public servant borrower's loans. With 1 percent approval of PSLF applications, the DOE paid out $30.6 million to forgive outstanding loans. **The Consumer Financial Protection Bureau estimates that about 25 percent of the nation's workforce is eligible for the PSLF program. The PSLF program cannot sustain these exorbitant costs.** --- Victoria L. Creta

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Nissan Dealers Make Bank Steering Customers into Longer-Term Auto Loans

"According to a letter Nissan sent its dealers in the US, they can make a dealer fee of 1% on the total amount financed, if salespeople can land a customer with promotional financing."

Why this is important: As demand for new and more expensive vehicles continues to increase, even despite the pandemic's impacts, it is unsurprising to see car manufacturers introducing profit-maximizing programs. Nissan's new program, however, has raised eyebrows because it appears to incentivize dealers to induce consumers into long financing terms that could have significant detrimental impacts. Under Nissan's dealer compensation program, car dealers would receive financial incentives for signing consumers onto financially precarious agreements such 7-year loan terms at non-promotional rates. As innumerable auto finance articles have pointed out, these extensive loan terms often seem attractive because they have lower monthly payments, but frequently harm the consumer by (1) inducing the consumer to purchase a car that they cannot afford; (2) increasing the odds of going underwater on the loan; and (3) drastically enlarging the interest amount paid over the life of the loan. **Potential buyers should be wary of agreeing to any extended loan terms, particularly at non-promotional rates, and should keep in mind that these systems are designed to benefit the manufacturer and the dealer, not the consumer.** --- James E. Simon

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Credit Report Availability & Scrutiny Grow

"The three nationwide consumer credit reporting agencies — Equifax, Experian and TransUnion — are extending free weekly credit reports to Americans for an additional year to April 20, 2022."

Why this is important: Pre-pandemic, federal law permitted individuals to receive one free credit report per year from each of the three major credit reporting agencies (Equifax, Experian, and TransUnion). As part of the CARES Act, creditors were required to adjust how certain accounts were reported to credit reporting agencies. The moratorium on student loan and mortgage payments set forth in the CARES Act was not supported to have any negative impact on borrowers' credit scores. As a result of the pandemic, the three credit bureaus provided free weekly credit reports to consumers. Recently, the three major credit bureaus extended the free weekly report through April 2022. "The Consumer Data Industry Association recommended that individuals should review all items appearing in each section of their credit report." **Creditors reporting accounts should ensure that reporting is compliant with the FCRA and all pandemic-related changes and requirements to prevent disputes or litigation over the reported accounts**. --- Angela L. Beblo

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CEO of a Top Bitcoin Exchange Warns a Crackdown on Cryptocurrencies May be Coming

"Cryptocurrencies have surged in value lately, with bitcoin hitting a record high price of more than $61,000 last month."

Why this is important: With cryptocurrencies ("crypto") becoming increasingly popular, the CEO of one of the largest digital currency exchanges, Kraken, is warning that a crackdown on crypto may be imminent. Crypto has been on a tear lately with Bitcoin trading over $60,000 and Coinbase going public. This is pushing regulators in the U.S., and elsewhere, into "considering strict new rules on crypto." One proposed anti-money laundering rule would require identity checks on any person who makes a crypto transaction over $3,000; Coinbase has already begun making ID checks mandatory to use certain features on its site. Additionally, the IRS has begun to collect crypto data by including questions about crypto in tax forms and by issuing John Doe summons to cryptocurrency exchanges. A John Doe summons is an IRS investigative tool used to locate the names of taxpayers that the IRS believes is violating the law. **What is becoming increasingly clear is that the government is taking crypto seriously and making it more of a priority than in years past.** --- Kellen M. Shearin

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Featured Spilman Attorney Profile

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Ms. Mullins is an associate located in our Charleston office. She focuses on all types of litigation, including consumer finance law. Megan conducts research and drafts case analyses, pleadings and discovery; assists in depositions and trial preparation; and assists clients through all phases of arbitration, including preparation, hearings, and post-arbitration practice.

She received her B.A. from Morehead State University and her J.D. from the University of Kentucky College of Law. She is a member of the West Virginia State Bar and is pending admission to the Kentucky State Bar.

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