LEGAL LEAGUE 100
QUARTERLY
SUMMER 2018
COMMITTED TO THE INDUSTRY, INTEGRITY, AND BEST PRACTICES

National

The "Protecting Tenants at Foreclosure Act" of 2009 Has Been Restored

by Roy Diaz, SHD Legal Group

On May 24, 2018, President Trump signed a bill into law called the "Economic Growth, Regulatory Relief, and Consumer Protection Act" (hereinafter "Consumer Protection Act"). Public Law No. 115-174 Title III, Consumer Protection Act, § 304. Among other things, the Consumer Protection Act restored "the notification requirements and other protections related to the eviction of renters in foreclosed properties," as provided under Sections 701 through 703 of the Protecting Tenants at Foreclosure Act (PTFA or the Act). PTFA, § 304. The PTFA was initially enacted in 2009 but included a "Sunset Provision" that provided an expiration date of December 31, 2014. PTFA § 704.

Under the restored provisions of the PTFA, "any immediate successor in interest" to a foreclosed property "shall assume such interest subject to" a bona fide tenant. PTFA § 702(a). This means that, before beginning eviction proceedings, the bank must first determine whether there is a "bona fide lease" affecting the property. To be considered a bona fide lease the tenant cannot be the mortgagor or a "child, spouse, or parent of the mortgagor." PTFA § 702(b)(1). Additionally, the lease must be the result of an "arms-length transaction" and require payment of rent "that is not substantially less than fair market rent." PTFA § 702(b)(2) and (3).

If the tenant entered the bona fide lease before "the notice of foreclosure," an undefined term in the Act, then the tenant is entitled to "occupy the premises until the

"Tenants" continued on page 7

National

Possible Relief: The Practice of Law Technical Clarification Act of 2018

By Michelle Garcia Gilbert, Gilbert Garcia Group, P.A.

Is this the FDCPA relief that default servicing law firms need? The Fair Debt Collection Practices Act (FDCPA), found at 15 U.S.C. § 1692 –1692p, was passed by Congress on September 20, 1977, (and as subsequently amended) as a consumer protection amendment, establishing legal protection from abusive debt collection practices, to the Consumer Credit Protection Act, as Title VIII of that Act.

Subsequent state and federal cases brought under the Act interpreted actions by law firms and attorneys pursuing lawsuits that collect debts and that foreclose mortgages and liens as violations of the FDCPA. The Act requires a $1,000 per incident penalty, plus attorney's fees under a strict liability standard, with a couple of exceptions. Over the years, the award of attorney's fees led to the filing of lawsuits against law firms alleging a violation of the FDCPA. Law firms often settle these cases as a cost of doing business rather than risk an adverse decision; though alleged contact might be a letter or pleading and hence a penalty of $1,000 per incident, the fees award could be several times the

"Relief" continued on page 7

States: New York

Establishing Compliance With Pre-Foreclosure Statutory Requirements

By Margaret J. Cascino, Stern & Eisenberg, P.C.

One of the most common challenges facing lenders in foreclosure actions across the country relates to providing sufficient evidentiary proofs to establish a lender's right to foreclose on a particular mortgage loan. New York is no different. In New York, long gone are the days where standing was the main affirmative defense raised in answers filed by borrowers. Today, the focus is on a lender's failure to establish compliance with state-mandated pre-foreclosure demands. New York, like many other states, has its own statutorily mandated pre-foreclosure notice. The 90-day notice, set forth in Real Property Actions and Proceedings Law (RPAPL) §1304, provides that a lender/servicer must send the statutory notice to a borrower at least 90 days prior to the commencement of a foreclosure action. The state-mandated letters are set forth on the New York Department of Financial Services' website in seven different languages. The 90-day notice must be sent to a borrower at the property address to be foreclosed, as well as any mailing address on record for the borrower. The mailing must occur via both regular and certified mail.[1]

Unlike other states, which allow a foreclosing lender to remediate a defective statutory demand in a pending foreclosure action, New York courts have concluded that a lender's failure to establish strict compliance with RPAPL §1304 mandates the dismissal of the foreclosure action.[2] With a dismissal at stake, it is critical that the foreclosing lender submit the requisite proofs to establish compliance with the statute. Evidence of compliance includes an affidavit or certificate of mailing executed at the time of the mailing of the demand letters, imaged copies of the envelopes showing the USPS postmark (the actual date of mailing of the demands), imaged

"Compliance" continued on page 4

A CHANGING OF THE GUARD

As leadership of the League passes to a new Chair in the form of Roy Diaz, he and departing Chair Neil Sherman discuss past accomplishments and future goals. The Legal League 100, a professional association of financial services law firms with member law firms spanning nearly all 50 states, recently gathered at the historic Joule Hotel in Dallas, Texas, for their 11th Spring Servicer Summit. A leading force for industry standards, market research, and policy change, the League is committed to supporting the mortgage servicing industry through education, communication, relationship development, and advisory services. In addition to a full day of education and communication between attorneys, servicers, and government representatives, the Summit also saw the announcement of the League's most recent leadership elections. The group announced that Roy Diaz, Managing Shareholder, SHD Legal Group P.A., had been elected Chair of the Legal League 100.

A member of the Florida Bar since 1988, Diaz has concentrated his practice in the areas of real estate, litigation, and bankruptcy. He has represented lenders, servicers of both conventional and GSE loans, private investors, and real estate developers throughout his career, with an emphasis on the mortgage servicing industry for over 22 years.

Diaz, who previously served on the Legal League 100's Advisory Council, took over the position from departing Chair Neil Sherman, Managing Partner, Schneiderman & Sherman, who served as Legal League 100 Chair from May 2016. Sherman will continue serving as a member of the Advisory Council.

In the midst of the Servicer Summit, both Diaz and Sherman took some time to sit down with *DS News* and reflect on where the League has been, where it's going, and what it means to the both of them.

"I'm motivated by the work Neil Sherman did," Diaz said. "That was the reason I threw my hat into the ring. Neil moved things in a positive direction, and I felt like that needed to be carried forward. My focus for my tenure as Chair of the Legal League 100 will be on maintaining a clear vision of where the industry is, evolving industry requirements and opportunity for improvement, and bringing that vision to the membership."

When asked if he had any advice for Diaz, Sherman laid out two suggestions. "Listen to our members—what their needs are and what their concerns are. Our goal is to provide feedback and advice on behalf of our membership to both the Five Star Institute and the industry at large." Secondly, Sherman counseled Diaz to remain steady and consistent. "These are such important times," Sherman said. "We need a level of consistency so that we can continue to build upon what we've done over the last decade."

"Roy is a fantastic candidate," Sherman continued. "He has a tremendous amount of experience, and he's been a huge asset to the board. He'll do a wonderful job."

Looking ahead, Diaz highlighted the unique position the industry finds itself in as he takes the reins of the League. "We're dealing with challenges we haven't experienced before," Diaz said. "We're dealing with low portfolio volumes and an environment where there are no clear indicators of when or how that might change. I see a lot of question marks on the road ahead, which means we have to stay fluid as an industry and as a League. We can't get too entrenched in a plan."

"It's imperative that we don't throw the baby out with the bath water," Sherman said. "There have been many good regulations imposed within our industry. There may have been some over-regulation because of the crisis, but that appears to be easing up. Our goal is to provide stability for America's housing market through progressive collaboration."

Diaz believes compliance will be one of the significant challenges to tackle during his tenure. "What's expected of us in this low-volume environment is very different than what was expected of us before the crisis. The amount of work involved in a file now is very different. There are probably 10 additional steps at each phase of the case that weren't there before."

As for Sherman, he said he believed servicers and financial services firms need to keep their eyes on the future—and on the technology that will take us there. "If you're not learning about the fintech side of our industry and contemplating how that will adjust the way we do business, you'll likely be left behind," Sherman said.

Sherman doesn't believe the human element will be any less critical, however. "People and methodical thinking will be as important as ever, but we will have better tools," Sherman said. "It's important that both the default servicing side and the origination side of our industry understand how technology is going to impact what they're doing and how we have to adjust as small businesses. If you are a large bank servicer or non-bank servicer, you're putting incredible manpower and money behind fintech. If you're a small business law firm, you are working hard to stay current on what's happening in the fintech space."

Looking forward to initiatives he would like to implement within the Legal League, Diaz highlighted something he's already been doing on his own. Diaz regularly sends out a monthly email blast from his firm, in which he spotlights a couple of important cases or developments and provides context and insights. "That's an idea I think could carry over to the League," Diaz said, "examining how we are communicating outside of the summits. How are we keeping that line of communication going?"

Sherman also emphasized the importance of maintaining communication between League firms and the rest of the industry. "We are constantly talking about how we can improve efficiencies between our firms, the servicers, and the investors themselves," Sherman said. "We're creating an open dialogue about what our industry looks like in 2018, which isn't the same as 2009 or even 2015. We have to recognize that."

"Change doesn't come quickly, and trying to rush change doesn't work," Diaz said. "As an industry, we need to stay focused, stay patient, and stick to the plan. In my role as Legal League 100 Chair, I will keep a clear focus on industry needs—anticipating them, bringing them to the forefront, and dealing with them."

As he looked back on his time as Chair of the Legal League, Neil Sherman told *DS News* he believed the organization and its work was more important than ever. "Trying to solve our industry's issues alone from my office in Detroit, Michigan, is a much harder uphill climb than doing it as a collective in an association like the Legal Legal League, Neil Sherman said he believed the organization and its work were more important than ever. "Trying to solve our industry's issues alone from my office in Detroit, Michigan, is a much harder uphill climb than doing it as a collective in an association like the Legal League. It's up to our group to continue to evolve what we do."

States: Maryland

Maryland Quiet Title Case Underscores the Necessity of Following the Rules

By Sara Tussey, Rosenberg & Associates

One thing that is always true about litigation is that there are rules and procedures which must be followed. State legislatures are constantly promulgating new laws and courts are constantly interpreting new and existing laws, all of which can change the way cases are litigated. In October 2016, Maryland adopted new procedures for litigating quiet title actions. In a recent quiet title case, *Estate of Zimmerman v. Blatter,* 2018 Md. LEXIS 191, 2018 WL 1882953, the Court of Appeals of Maryland determined that those rules and procedures apply retroactively.

The lawsuit involved a disputed six-acre parcel located between two farms, the Zimmerman Farm and the Laughlin Farm, in Frederick County, Maryland. In June 2014, the Zimmerman Estate filed a quiet title action asserting that it had a superior right to use the parcel based on adverse possession. Blatter and Maharaj, who were the owners of the Laughlin Farm, disagreed. The Laughlin Farm had originally been part of a large acreage owned by Abner Devilbiss. In 1908, Devilbiss sold all but the six-acre parcel. There was no subsequent conveyance of the six-acre parcel. The parcel has no Maryland Tax ID and is not recognized as part of any property with a Maryland Tax ID. While both parties asserted rights to the parcel, they believed that Abner Devilbiss, or his estate, was still the record owner of the disputed six acres.

When the case came to trial before the Frederick County Circuit Court, the parties acknowledged that the record owner of the parcel, Abner Devilbiss, was not a party to the case. Maryland Real Property Rule 14-108 requires that record owners of property must be joined in any quiet title action. However, Abner Devilbiss is deceased, as are a number of his heirs, and the parties had determined that opening the required estates was cost prohibitive. The circuit court agreed to hear the case but would only rule as to who among the parties had the higher right of use; it would not issue a ruling against the entire world. The circuit court ruled in favor of Zimmerman.

Blatter and Maharaj appealed to the Court of Special Appeals, which determined that the circuit court had erred. The Court of Special Appeals held that Maryland Real Property Rule 14-108 required all parties with interest to be included in the suit and there could be no exceptions to the rule. Since the record owner was not joined as a necessary party, the Court of Special Appeals reversed the circuit court's judgment and remanded the case for dismissal. Zimmerman appealed. While the case was pending in the Court of Special Appeals, Maryland had enacted its new quiet title legislation.

One of the new rules provided a procedure for how to join parties who are believed to be deceased, including how to name them in the complaint, how to effect service upon them, and what affidavits to file with the court in support. The Court of Appeals agreed that the circuit court should not have heard the case without all necessary parties. However, the court then asked whether the new rules would apply to this case. If the new rules applied, then rather than dismissing the case in circuit court, Zimmerman could amend the complaint to add Abner Devilbiss' interest in compliance with the new rules. The court instituted a new two-part test to determine whether rules would apply retroactively, focusing on the legislature's intentions and the fact that the rules were procedural rather than substantive. The court ultimately held that the quiet title statute was retroactive and could be used in this case to join the deceased record owner without having to open the estate.

The lesson from this case is that following the rules matters. If Zimmerman had properly joined the record owner from the beginning, the case likely would have ended much sooner with a judgment in his favor by the circuit court. However, by deciding that it was too difficult and expensive to join a necessary party, he opened up his case to multiple appeals and possible dismissal. The time and expense spent on the appeals are likely more than what would have been spent to join the record owner from the beginning. In litigation, as with many things, taking the time to do something right from the beginning will often save you time and money at the end.

***Sara Tussey** is an Associate with Maryland, Virginia, and D.C.-based Rosenberg & Associates, LLC, a Maryland LL100 member firm specializing in foreclosure, bankruptcy, title, litigation, eviction, and REO default legal services for lending institutions.*

"Compliance" continued from page 1

copies of the green cards, and imaged copies of returned green cards either executed by the borrower or returned as undeliverable/unclaimed.

Establishing compliance with the statute becomes more difficult on inherited mortgage loans where a prior servicer sent the demands. On inherited loans, it is common for a servicing file to fail to contain an affidavit of mailing of the demand letters, copies of the green cards, and/or other proof of mailing of the required demand letters.

For these loans and any other loans missing an affidavit of mailing, the foreclosing lender will need to introduce evidence falling within the business records exception to the hearsay rule. To fall within the business records exception, an affidavit must (1) establish that the affiant is familiar with the lender/servicer's mailing practices and procedures relating to the demands, (2) establish proof of a standard office practice and procedure designed to ensure that items are properly addressed and mailed by the lender/servicer, and (3) establish that the standard mailing practices and procedures were followed for the particular loan. Statements that are conclusory—e.g., "I reviewed the business records and confirm that the demand notice was sent on XXX via regular and certified mail to the borrower at the property address and mailing address, if applicable"—will be insufficient to meet the burden of establishing compliance with the statute.[3] Compliance with pre-foreclosure statutes will continue to be an issue for lenders throughout the country. To avoid evidentiary disputes and delays in the foreclosure process, care should be taken that the proper proof of the mailing of the pre-foreclosure demands is not only retained but also fully incorporated into the lender's business records.

1 RPAPL §1304. It is important to note that when RPAPL §1304 initially went into effect in 2008, the notice requirement only applied to those loans classified as "high-cost," "subprime," or "non-traditional." In 2009, the legislature amended the statute to apply to all residential home loans. The 90-day notice became a requirement for any residential foreclosure action involving a home loan commenced after January 14, 2010.

2 Aurora Loan Servs., LLC v Weisblum, 85 A.D.3d 95, 103 (2d Dept. 2011); Hudson City Sav. Bank v DePasquale, 113 A.D.3d 595, 596 (2d Dept. 2014); Pritchard v Curtis, 101 A.D.3d 1502, 1504 (2d Dept. 2012); Citimortgage, Inc. v. Espinal, 134 A.D.3d 876 (2d Dept. 2015).

3 M&T Bank v Joseph, 2017 NY Slip Op 05587 (2d Dept. 2017); Central Mtge. Co. v Abraham, 150 AD3d 961 (2d Dept. 2017); HSBC Bank USA v. Rice, 155 AD3d 443 (1st Dept. 2017); Investors Sav. Bank v Salas, 2017 NY Slip Op 05811 (2d Dept. 2017).

States: Illinois

Illinois Appellate Court Clarifies That Deceased Mortgagors Who Deed Their Interests in Property to a Trust Are Not Necessary Parties to Foreclosures

By: Blake A. Strautins and Jason B. Erlich, Kluever & Platt, LLC

Until the Illinois legislature amended 735 ILCS §5/15-1501(h) of the Illinois Mortgage Foreclosure Law in 2016, an open question remained in foreclosure lawsuits: must a special representative be appointed to represent the interests of a deceased mortgagor who no longer had any interest in the property before January 1, 2016? The appellate court's recent holding in *Deutsche Bank National Trust Company v. Estate of Vincent Schoenberg* finally answered this question in the negative, holding that the amendment to the IMFL retroactively applied.

Typically, special representatives are appointed to protect the interests of estates of deceased mortgagors, including any potential heirs or other beneficiaries. However, where a deceased mortgagor deeds his interest in a property to a trust, as in *Schoenberg*, the mortgagor no longer has any interest in the property. The *Schoenberg* court reasoned that no special representative is needed to protect non-existent property interests. Before *Schoenberg*, no published Illinois appellate court opinion expressly addressed this issue. This gap impacted all foreclosures filed before January 1, 2016. Before the amendment to §5/15-1501(h), Illinois law was unclear on whether a special representative needed to be appointed to represent the interests of deceased mortgagors who deeded his/her interests in the property to a trust before their death. The Illinois legislature's amendment, however, expressly clarifies that no such appointment is necessary under these circumstances.

However, the amendment did not become effective until January 1, 2016. Under Illinois's Statute on Statutes (5 ILCS 70/4), statutory amendments that are procedural may be applied retroactively. The *Schoenberg* court held that the amendment applied retroactively to all foreclosures filed before the effective date of the amendment because the amendment was procedural. *Schoenberg* confirmed that, whether or not there is a trust, the same principle applies: if a mortgagor conveys his or her interest to a trust before death, there is no need to appoint a special representative. In sum, *Schoenberg* holds that where a deceased mortgagor deeds his or her interest in property into a land trust before a foreclosure is filed, then the mortgagor is deemed a permissible but not a necessary party to the foreclosure, and need not be named as a defendant for purposes of the court having subject matter jurisdiction over the foreclosure proceedings.

Kluever & Platt, LLC succeeded in representing the foreclosure plaintiff in *Schoenberg*, including efforts to overturn the lower court's rulings in its favor, ultimately securing an important ruling from the appellate court that the amendment to §5/15-1501(h) of the IMFL applies retroactively.

***Blake Strautins** is a partner at Kluever & Platt, LLC a Legal League member firm. Named as a Rising Star in 2014, 2015, and 2016 by Illinois Super Lawyer Magazine, Strautins helps clients successfully navigate the complex challenges that arise in contested foreclosure litigation, complex appellate cases, and business litigation in federal and state courts nationwide.*

***Jason Erlich** is also a partner Kluever & Platt, LLC and focuses his practice in real estate, construction, and business counseling. Erlich devotes a significant portion of his practice to the representation of developers of condominiums and mixed-use developments. Erlich represents lenders and servicers in connection with the sale and liquidation of post-foreclosure assets.*

States: Illinois

Appellate Court Continues to Clarify Requirements of a Purchaser at a Foreclosure Sale in Extinguishing Condominium Association Lien

By Marcos Posada, McCalla Raymer Leibert Pierce, LLC

Illinois continues to present challenges to purchasers of condominiums at foreclosure sales. Many associations make it difficult to pay the proportionate share of assessments following the foreclosure sale by refusing to provide ledgers, providing ledgers untimely, or by adding on unwarranted fees and costs to their ledgers. Because of the potential for litigation in this area, Illinois continues to present updates to existing case law which refine the process of lien extinguishment post-foreclosure sale. Fortunately, the First District Appellate court of Illinois, in its April 20, 2018, opinion, provided purchasers additional clarity on what can constitute extinguishment of an association's lien.

In *Quadrangle House Condo. Ass'n v. United States Bank, N.A.,* 2018 IL App (1st) 171713, the association appealed the trial court order granting summary judgment in favor of U.S. Bank, N.A., the purchaser of the condominium unit following the foreclosure sale that occurred on November 13, 2015. The only issue on appeal presented by the association was whether, "pursuant to section 9(g)(3) of the Act, the Bank's $5411.31 payment for post-purchase assessments on September 13, 2016, confirmed the extinguishment of any lien in its favor by reason of the prior unit owner's failure to pay assessments accruing prior to the Bank's purchase of the Subject Unit at the foreclosure sale." *Quadrangle House Condo. Ass'n v. United States Bank, N.A.,* 2018 IL App (1st) 171713, ¶ 9.

The association argued that section 9(g)(3) of the Illinois Condominium Property Act (hereinafter "Act") required a strict deadline for payment of assessments and US Bank was required to make its payment for assessments the month following the judicial foreclosure sale. Having issued payment approximately 10 months after the sale, the association concluded that U.S. Bank failed to extinguish its lien for pre-sale assessments. The court rejected the association's argument and found:

As this court noted in its decision in *Country Club Estates Condominium Ass'n v. Bayview Loan Servicing LLC,* 2017 IL App (1st) 162459, ¶ 14, "it is clear that a foreclosure buyer's duty to pay monthly assessments begins on 'the first day of the month after the date of the judicial foreclosure sale.' [Citation.] But on the face of the statute, section 9(g)(3) does not contain any time limit for confirming the extinguishment of an association's lien." See also *5510 Sheridan Road Condominium Ass'n v. U.S. Bank,* 2017 IL App (1st) 160279, ¶ 20. In its decision in 1010 Lake Shore, the supreme court did state that "[t]he first sentence of section 9(g)(3) plainly requires a foreclosure sale purchaser to pay common expense assessments beginning in the month following the foreclosure sale." 1010 Lake Shore, 2015 IL 118372, ¶ 24. However, we do not interpret that phrase to mean that the purchaser of a condominium unit at a foreclosure sale must commence remitting payments for post-purchase assessments in the month following the sale. *Quadrangle House Condo. Ass'n v. United States Bank, N.A.,* 2018 IL App (1st) 171713, ¶ 11.

Further in its opinion, the court explained that prompt payment was not a condition precedent to the extinguishment of an association lien created under 9(g)(1) of the Act holding "Section 9(g)(3) of the Act, the legislature did not place any temporal requirement on the payment of post-purchase assessments in order for the payment to confirm the extinguishment of any lien created under subsection 9(g)(1) of the Act; nor do we believe that the supreme court in 1010 Lake Shore found promptness of payment to be an implicit requirement in the statute. To the extent that the decision in Bayview held to the contrary, we decline to follow it." *Quadrangle House Condo. Ass'n v. United States Bank, N.A.,* 2018 IL App (1st) 171713, ¶ 15.

In affirming the Trial Court's order, the Appellate Court found that U.S. Bank's payment of post-foreclosure sale assessments, 10 months after the sale occurred, sufficiently extinguished the lien of the association. As condominium units are frequently purchased at the foreclosure sale by the foreclosing plaintiff, it is important to act quickly in seeking a ledger from the appropriate association so that payment for post-sale assessments can begin. Equally important is that counsel be obtained in the event an association seeks unwarranted fees or assessments following the foreclosure sale because a successful challenge to an association could save tens of thousands of dollars.

***Marcos Posada** is the Managing Partner for the Illinois Litigation Practice Group at McCalla Raymer Leibert Pierce, LLC. In that capacity, Posada actively handles the firm's retention of litigation matters and works tirelessly for the establishment of the firm serving as Litigation Counsel for outside matters. In addition to having daily oversight over the firm's entire portfolio of litigated matters, Posada is directly involved in the firm's Appellate cases, successfully obtaining decisions favoring his clients in nearly every case.*

PROVEST®

Managing The Process of Service™

A trusted source in a constantly changing industry.

Stable

Resilient financial strength with the ability to withstand industry changes while limiting exposure to risk. Recognized and respected service with more than 20 years as a leading service provider. Supremely focused offering client-centric relationships and targeted attention in the mortgage and default industry.

Sound

Sophisticated Risk, Compliance and Internal Audit teams made up of highly skilled, experienced professionals who are dedicated to assisting the business in maintaining comprehensive business practices and controls in response to industry standards.

Secure

Customizable secure data integration. Real-time data and document access. Committed to the design and operating effectiveness of security and confidentiality controls with annual SOC-2 attestation.

Recognized as the industry leader in process server management, ProVest leverages industry expertise and technology to manage the service of process for companies specializing in default law. ProVest will provide stability, soundness and security through financial strength and investments in risk and compliance, audit, technology and vendor management practices.

Headquartered in Tampa, Florida, ProVest offers nationwide service with offices in 15 locations. ProVest works with some of the most noted and trusted legal firms, with a goal of continuing to streamline the manner in which documents are served and a focus on the highest level of quality, speed and accuracy. Services include, but are not limited to: Service of Process for Foreclosure, Credit Collections, HOA/COA, and Insurance Litigation; Home Retention Services; Skip Trace solutions including Data Services, Heir and Military Searches plus borrowers Verification programs with Investigators on site; Court Services such as Document Retrieval; Early Stage Delinquency, Signature Verification, and Occupancy Verification.

For more information about ProVest, visit our website at www.ProVest.us or email info@ProVest.us

Call us today at 800.587.3357

AICPA SERVICE ORGANIZATIONS SOC aicpa.org/soc Formerly SAS 70 Reports

"tenants" continued from page 1

end the remaining term of the lease." In the case of an at-will lease or no lease at all, the tenant is entitled to a 90-day written notice to vacate. The Act does provide an exception to these requirements in the event the "immediate successor in interest" will occupy the unit as a primary residence. However, even in that case, the bona fide lease will not be terminated until expiration of the 90-day notice to vacate. PTFA § 702(a)(2)(A).

The PTFA also provides that "nothing under this section shall affect the requirements … of any State or local law that provides longer time periods or other additional protections for tenants." PTFA § 702(a)(2)(B). In Florida, the legislature enacted § 83.561, Fla. Stat., which provides a shorter 30-day period for the notice of eviction and does not require the new owner to honor any bona fide lease in existence before the notice of foreclosure. Due to these "lessor" protections, ostensibly, the requirements of the PTFA supersede those of § 83.561, Fla. Stat. The one exception to this may be § 83.561(1)(b), Fla. Stat., which provides the tenant "is entitled to the protections of s. 83.67." This section, entitled "Prohibited practices," enumerates several restrictions placed on a landlord and is not included in the PTFA. Presumably, since it is an "additional protection" for a tenant, compliance with § 83.561(1)(b), Fla. Stat., will still be required even after the enactment of the PTFA.

Although the PTFA provisions contained in §§ 701-703 were in effect from 2009 to 2014, one can anticipate continued litigation at the trial court level as to who qualifies as an "immediate successor in interest," what constitutes "notice of foreclosure" and what constitutes a "bona fide lease." There is very little precedential case law interpreting and applying these provisions, while there are thousands of circuit court cases that have dealt with the PTFA.

The anticipated effect of the PTFA on the mortgage industry is to delay and complicate the eviction process after a bank successfully forecloses its mortgage lien. Banks that purchase a property at a foreclosure sale will need to factor in at least an additional 90-120 days to complete an eviction, likely more, until procedures can be streamlined to determine who constitutes a bona fide tenant and the earliest a 90-day eviction notice can be sent.

***Roy Diaz** is the Managing Shareholder of SHD Legal Group P.A. in Fort Lauderdale, Florida, and has been a member of the Florida Bar since 1988. He has concentrated his practice in the areas of real estate, litigation, and bankruptcy. He has represented lenders, servicers of both conventional and GSE loans, private investors, and real estate developers throughout his career, with an emphasis on the mortgage servicing industry for over 20 years. Diaz is the current Chair of the Legal League 100 Advisory Council.*

"Relief" continued from page 1

amount of the penalty.

Congressman Alex Mooney (R-Virginia) and Vicente Gonzalez (D-Texas) sponsored House Bill 5082, titled "The Practice of Law Technical Clarification Act of 2018," on February 23, 2018, which bill was referred to the House Committee on Financial Services. The purpose of the succinct bill (https://www.govtrack.us/congress/bills/115/hr5082/text) is:

> *… to exclude law firms and licensed attorneys who are engaged in activities related to legal proceedings from the definition of a debt collector, to amend the Consumer Financial Protection Act of 2010 to prevent the Bureau of Consumer Financial Protection from exercising supervisory or enforcement authority with respect to attorneys when undertaking certain actions related to legal proceedings, and for other purposes.*

Specifically, if an attorney or firm works on a legal action to collect a debt, in which the legal action is served or attempted on a debtor, including filing legal documents; communicating in a legal action event such as a mediation or deposition; or acting in other legal matters connected to that legal action, the attorney or firm is excluded from the definition of a debt collector.

Put another way, the FDCPA would not apply to attorneys or law firms while engaged in the practice of law in connection with the collection of a debt. The bill goes farther and uses this exclusion from the definition of a debt collector to amend the Consumer Financial Protection Act of 2010 and to limit the reach of the Bureau of Consumer Financial Protection (BCFP) to supervise these same attorneys and law firms.

On March 21, 2018, the House Financial Services Committee voted to issue a report to the full House recommending that the bill should be considered for passage. Please note that only one in four bills is reported out of committee. The odds of the bill becoming law, according to Skopos Labs (https://www.skoposlabs.com/about), are 33 percent. Let's hope Skopos' odds are wrong because the bill dies if not passed during this Congressional session, which ends January 3, 2019.

***Michelle Garcia Gilbert** is President and CEO of Gilbert Garcia Group, P.A. She handles a wide variety of legal matters for the firm and has substantial litigation experience in both default and non-default cases, including jury and non-jury trials, motion practice, and appellate oral argument, throughout the state of Florida. She practiced real estate and business law since 1989, specializing in default servicing legal work, including litigated foreclosures, real estate closings, evictions, and commercial litigation.*

MOVERS & SHAKERS

THE MORTGAGE LAW FIRM WELCOMES MANAGING PARTNER, EXPANDS LOCATIONS

The Mortgage Law Firm, PLC has announced that Sally Garrison will be joining the firm as Managing Partner of the firm's Oklahoma office. Garrison will be establishing and growing the firm's presence in that market.

"Sally is an experienced litigator with an in-depth understanding of our industry," said Jason Cotton, President and CEO. "In addition to her wealth of experience, she is also exceptionally talented at building long-lasting relationships with our clients and colleagues. This addition to our leadership team underlines the commitment this firm has to providing outstanding quality and developing long-term relationships."

PADGETT LAW GROUP HIRES EXECUTIVE DIRECTOR OF OPERATIONS

Padgett Law Group (PLG) is proud to announce and welcome Brandy M. Green to the firm. Green will take over the Executive Director of Operations role recently vacated by Robyn S. Padgett. Green will report directly to General Counsel/VP Laura Conrad, with a dotted line to Robyn Padgett. Effective immediately, Padgett will assume the new role of Chief Development Officer. In order to ensure a smooth transition, Green will be working closely with Padgett over the next few months.

Green comes to PLG with more than 20 years' experience as a veteran of the creditor rights' industry and brings to the firm her invaluable knowledge and experience. Green holds a degree from Darton College and is an American Bar Association (ABA) certified paralegal. In her new role, Green will be responsible for implementing and executing the firm's business plans according to its business model and ensuring that all appropriate actions are taken to expedite the firm's portfolio of business. Her primary focus will be based on client Service Level Agreements and performance requirements, as well as oversight and management of the firm's high-volume multi-state creditors rights' practice, including but not limited to, foreclosure process and operations, bankruptcy process, and retail and REO closing transactions.

MCCALLA RAYMER LEIBERT PIERCE ANNOUNCES LEADERSHIP CHANGES

McCalla Raymer Leibert Pierce, LLC is pleased to announce that Kerry McInerney has joined the firm as Managing Partner of the firm's Alabama and Mississippi Litigation and Trial Practice Group. The firm is also pleased to announce that William Tate, previously a partner in the firm's Commercial Litigation Group, has been named Managing Partner of the firm's Georgia Litigation and Trial Practice Group. McInerney and Tate will manage teams of experienced litigators handling a variety of complex matters. They will also join the firm's Management Committee.

Managing Partner and CEO Marty Stone expressed great excitement about these appointments: "Kerry and Will bring a vast amount of experience, goodwill, and enthusiasm to their groups. We are extremely pleased they are assuming these new leadership roles at the firm. The addition of Kerry and Will to the Management Committee adds undeniable depth and bench strength, showcasing the firm's commitment to both growth and quality of litigation services in Alabama, Mississippi, and Georgia."

Kerry McInerney brings a stellar reputation and over 22 years of litigation experience with him to the firm. Before joining McCalla, McInerney was a shareholder with Sirote & Permutt, P.C., where he handled complex lender and servicer liability cases and served as co-chair of that firm's Mortgage Litigation Group. Will Tate began his legal career as an associate in the creditors' rights group at Morris, Manning & Martin LLP in Atlanta in 2009. Tate joined McCalla in 2013 as a senior associate in the Commercial Litigation and Transactions Group and was named a partner in that group in 2016.

RICHARD M. SQUIRE & ASSOCIATES ANNOUNCES EXPANSION

Richard M. Squire & Associates, LLC, announced its expansion into New Jersey. The firm, which brands itself as "smaller than some but second to none," holds key business values such as "integrity, client satisfaction, and results." The statement expressed the company's excitement to now have a multi-state footprint with operations throughout Pennsylvania and New Jersey. "We are thrilled to be able to provide client-focused representation in the State of New Jersey to our present and prospective clients," the statement said. "Our services will be available statewide and will adhere to our existing Pennsylvania standards of excellence."

The firm's representation encompasses all areas of creditor's rights, including residential and commercial mortgage foreclosures, loss mitigation, bankruptcies, evictions, title curative, replevins/repossessions, settlement management, REO closings, and debt collection. As a qualified small business, the firm is authorized to work on federal contracts, allowing clients to be compliant with the set-aside requirements for Freddie Mac, Fannie Mae, Ginnie Mae, FHA, USDA, and VA.

BENDETT & MCHUGH ATTORNEYS NAMED RISING STARS

Bendett & McHugh, P.C. is pleased to announce that firm partners Robert Wichowski and William Dziedzic have been selected to 2018 Connecticut Rising Stars list. Each year, no more than 2.5 percent of the lawyers in the state are selected by the research team at Super Lawyers to receive this honor.

Super Lawyers, a Thomson Reuters business, is a rating service of outstanding lawyers from more than 70 practice areas who have attained a high degree of peer recognition and professional achievement. The annual selections are made using a patented multiphase process that includes a statewide survey of lawyers, an independent research evaluation of candidates, and peer reviews by practice area. The result is a credible, comprehensive, and diverse list of exceptional attorneys.

LEGAL LEAGUE 100 ATTORNEYS CHART THE INDUSTRY'S COURSE FORWARD

The 11th semi-annual Legal League 100 Spring Servicer Summit took place at the historic Joule Hotel in Dallas, Texas, on May 1, 2018. The professional association marked the occasion by announcing the results of its recent member elections. The League announced that Roy. A. Diaz, Managing Shareholder, SHD Legal Group P.A., has been elected Chair of the LL100.

Diaz previously served on the Legal League 100's Advisory Council. He will take over from departing Chair Neil Sherman, Managing Partner, Schneiderman & Sherman, who served as Legal League 100 Chair from May 2016. Sherman will continue serving as a member of the Advisory Council.

Diaz told *DS News*, "My focus for my tenure as Chair of the Legal League 100 will be on maintaining a clear vision of where the industry is, evolving industry requirements, industry opportunity for improvement, and bringing that vision to the membership."

Roy A. Diaz has been a member of the Florida Bar since 1988. He has concentrated his practice in the areas of real estate, litigation, and bankruptcy. He has represented lenders, servicers of both conventional and GSE loans, private investors, and real estate developers throughout his career with an emphasis on the mortgage servicing industry for over 22 years. Diaz is admitted to Federal Court practice in the United States District Court for the Southern, Middle, and Northern Districts of Florida. He is also admitted in the United States Court of Appeals for the Eleventh Circuit. He is AV Rated by Martindale-Hubbell, which is the highest peer rating for Ethical Standards and Legal Ability.

The group also announced several changes to the group's Advisory Council. The Council gained two new members: Stephen M. Hladik, Principal, Hladik, Onorato & Federman, LLP, and Chad Neel, Chief Executive Business Officer, McCarthy & Holthus LLP. J. Anthony Van Ness, President, Van Ness Law Firm, PLC, was also re-elected to another term on the Advisory Council.

"The health of any organization can be seen in the quality of leadership that volunteers to represent it," said Legal League 100 Executive Director Derek Templeton. "This year's slate of candidates represented the strongest field in the 11-year history of the Legal League. We are appreciative of every leader who took the time to run for a position and optimistic that the members elected will chart a course of continued growth and success for the organization."

The Advisory Council membership also includes Caren Castle, Senior Attorney, The Wolf Firm; Michelle Gilbert, Managing Partner, Gilbert Garcia Group; Erin Laurito, Managing Partner, Laurito & Laurito; and Richard M. Nielson, Managing Shareholder - Kentucky, Reimer Law.

The Legal League 100 Advisory Council strategizes growth opportunities, facilitates education, and enhances strategic relationships in the industry on behalf of the Legal League. Advisory Council Members are responsible for aiding the Chair, Vice Chair, Executive Director, and Ex-Officio of the Legal League 100 in developing new strategies for progress in the areas of legislative actions, education, compliance, advocacy, and marketing.

1 *Legal League Keynote speaker Yvette Gilmore, VP of Servicing Performance Management, Freddie Mac*
2 *Five Star President and CEO Ed Delgado presents a plaque to Neil Sherman of Schneiderman and Sherman as he steps down as Legal League 100 Chairperson*
3 *Default Litigation Update Panel at the Legal League Summit*

LEGAL LEAGUE ONE HUNDRED

ALABAMA

McCalla Raymer Liebert Pierce, LLC
678.281.6500
mrpllc.com

Rubin Lublin, LLC
205.982.4810
rubinlublin.com

ARIZONA

Houser & Allison, APC
480.428.8370
houser-law.com

The Mortgage Law Firm
619.465.8200
mtglawfirm.com

Tiffany & Bosco, P.A.
602.255.6006
tblaw.com

Zieve, Brodnax and Steele, LLP
714.848.7920
zbslaw.com

CALIFORNIA

Barrett Daffin Frappier Treder & Weiss, LLP
626.915.5714

Prober & Raphael, ALC
818.227.0100
pralc.com

McCarthy Holthus, LLP
877.369.6122
mccarthyholthus.com

The Mortgage Law Firm
619.465.8200
mtglawfirm.com

The Wolf Firm, A Law Corporation
949.720.9200
wolffirm.com

Tiffany & Bosco, P.A.
602.255.6006
tblaw.com

COLORADO

Barrett Frappier & Weisserman, LLP
303.813.1177

Weinstein & Riley, P.S.
206.438.1076
w-legal.com

CONNECTICUT

Bendett & McHugh, P.C.
860.677.2868
bendett-mchugh.com

McCalla Raymer Leibert Pierce, LLC
678.281.6500
mrpllc.com

DELAWARE

Stern & Eisenberg, P.C.
215.572.8111
sterneisenberg.com

DISTRICT OF COLUMBIA

Cohn, Goldberg & Deutsch, LLC
410.296.2550 ext. 3030
cgd-law.com

FLORIDA

Gilbert Garcia Group, P.A.
813.638.8920
gilbertgrouplaw.com

Kahane & Associates, P.A.
954.382.3486
kahaneandassociates.com

McCalla Raymer Liebert Pierce, LLC
678.281.6500
mrpllc.com

Quintairos, Prieto, Wood & Boyer, P.A
904.271.4030
qpwblaw.com

SHD Legal Group P.A.
954.564.0071
shdlegalgroup.com

Sirote and Permutt, P.C.
954.828.1138
sirote.com

Udren Law Offices, P.C.
856.669.5570
udren.com

Van Ness Law Firm, PLC
954.571.2031
vanlawfl.com

GEORGIA

ALAW
813.221.4743
alaw.net

Barrett Daffin Frappier Turner & Engel, LLP
972.341.5345

McCalla Raymer Liebert Pierce, LLC
678.281.6500
mrpllc.com

Rubin Lublin, LLC
770.246.3301
rubinlublin.com

Weissman PC
404.926.4500
weissman.law

HAWAII

The Mortgage Law Firm
619.465.8200
mtglawfirm.com

ILLINOIS

Codilis & Associates, P.C.
630.794.5300
codilis.com

Kluever & Platt, LLC
312.236.0077
klueverplatt.com

McCalla Raymer Liebert Pierce, LLC
312.476.5156
mrpllc.com

The Wirbicki Law Group, LLC
312.360.9455
wirbickilaw.com

INDIANA

Codilis Law, LLC
219.736.5579

Nelson & Frankenberger, P.C.
317.844.0106
nf-law.com

Shapiro, Van Ess, Phillips & Barragate, LLP
513.396.8121
logs.com

KENTUCKY

Lerner, Sampson & Rothfuss
513.412.6615
lsrlaw.com

Reimer Law Co.
502.371.0500
reimerlaw.com

LOUISIANA

Dean Morris, LLC
318.388.1440

MARYLAND

McCabe, Weisberg & Conway
301.490.3361
mwc-law.com

Rosenberg & Associates, LLC
301.907.8000
rosenberg-assoc.com

THE LEGAL LEAGUE 100 2018 ALL-STAR LINEUP

Raising the Bar for Financial Services Law Firms Acting as the voice of advocacy for its member firms, the Legal League 100 is dedicated to strengthening the mortgage servicing community.

214.525.6757 - LegalLeague100.com

Shapiro & Brown, LLP
301.731.8570
shapiroandbrown.com

MASSACHUSETTS

Doonan, Graves, & Longoria, LLC
978.921.2670
dgandl.com

Orlans PC
781.790.7800
orlansmoran.com

MICHIGAN

Fabrizio & Brook, P.C.
248.362.2600
fabriziobrook.com

Potestivo & Associates, P.C.
248.853.4400
potestivolaw.com

Schneiderman and Sherman, P.C.
866.867.7688
sspclegal.com

Trott Law, P.C.
248.594.5400
trottlaw.com

MINNESOTA

Randall S. Miller & Associates
248.636.2723
millerlaw.biz

Shapiro & Zielke, LLP
952.831.4060
zielkeattorneys.com

MISSISSIPPI

Dean Morris, LLC
318.330.9020

McCalla Raymer Leibert Pierce, LLC
662.388.5463
mrpllc.com

MISSOURI

Codilis, Moody & Circelli, P.C.
630.794.5200
codilisstawiarskimoody.com

Millsap & Singer, LLC
636.537.0110
msfirm.com

NEVADA

Tiffany & Bosco, P.A.
602.255.6006
tblaw.com

NEW HAMPSHIRE

Marinosci Law Group, P.C.
401.234.9200
mlg-defaultlaw.com

NEW JERSEY

Fein, Such, Kahn & Shepard, P.C.
973.538.4700
feinsuch.com

KML Law Group, P.C.
215.825.6353
kmllawgroup.com

Phelan, Hallinan, Diamond & Jones, P.C.
856.813.5500
phelanhallinan.com

Robertson, Anschutz and Schneid, PL
561.241.6901
rasflaw.com

Stern & Eisenberg, P.C.
215.572.8111
sterneisenberg.com

Stern, Lavinthal & Frankenberg, LLC
973.797.1100
sternlav.com

NEW MEXICO

Rose L. Brand & Associates, P.C.
505.833.3036
roselbrand.com

NEW YORK

Davidson Fink LLP
585.546.6448
davidsonfink.com

Frenkel Lambert Weiss Weisman & Gordon, LLP
631.969.3100
flwlaw.com

Gross Polowy, LLC
716.204.1700
grosspolowy.com

Rosicki, Rosicki & Associates, P.C.
516.741.2585
rosicki.com

Schiller, Knapp, Lefkowitz & Hertzel, LLP
518.786.9069
schillerknapp.com

Stein, Wiener & Roth, LLP
516.742.6161

NORTH CAROLINA

Brady & Kosofsky
704.849.8008
bandklaw.com

Shapiro & Ingle, LLP
704.333.8107
shapiro-ingle.com

OHIO

Carlisle Law
216.360.7200
carlisle-law.com

Clunk, Hoose Co. LPA.
330.436.0300
cphlpa.com

Laurito & Laurito, LLC
937.743.4878
lauritoandlaurito.com

Reimer Law Co.
440.600.5500
reimerlaw.com

Reisenfeld & Associates, LPA, LLC
513.322.7000
reisenfeldlawfirm.com

OKLAHOMA

Baer & Timberlake, P.C.
405.842.7722
Baer-timberlake.com

Kivell, Rayment and Francis, P.C.
918.254.0626
kivell.com

Lamun Mock Cunnyngham & Davis
405.840.5900
lamunmock.com

OREGON

Houser & Allison, APC
503.914.1382
houser-law.com

PENNSYLVANIA

Hladik, Onorato & Federman, LLP
215.855.9521
hoflawgroup.com

Martha E. Von Rosenstiel, P.C.
610.328.2887
mvrlaw.com

Powers Kirn & Associates, LLC
856.802.1000
powerskirn.com

Richard M. Squire & Associates, LLC
215.886.8790
squirelaw.com

Shapiro & DeNardo, L.L.C.
610.278.6800
shapiroanddenardo.com

PUERTO RICO

GLS Legal Services, LLC
787.648.3465
glslegalservices.com

Martínez & Torres Law Offices, P.S.C.
787.767.8244
martineztorreslaw.com

SOUTH CAROLINA

Bell Carrington & Price, LLC
803.509.5078
bellcarrington.com

Finkel Law Firm, LLC
803.765.2935;
843.577.5460
finkellaw.com

Riley Pope & Laney, LLC
803.799.9993
rplfirm.com

TENNESSEE

Mackie Wolf Zientz & Mann
615.238.3625
mwzmlaw.com

Cruikshank Ersin, LLC
770.884.8184
cruikshankersin.com

Padgett Law Group
850.422.2520
padgettlawgroup.com

TEXAS

Barrett Daffin Frappier Turner & Engel, LLP
972.386.5040

Bonial & Associates P.C.
972.643.6698
bonialpc.com

Hughes, Watters & Askanase, LLP
713.759.0818
hwa.com

McCarthy Holthus, LLP
877.369.6122
mccarthyholthus.com

UTAH

Scalley Reading Bates Hansen & Rasmussen, P.C.
801.531.7870
scalleyreading.com

VERMONT

Schiller, Knapp, Lefkowitz & Hertzel, LLP
518.786.9069
schillerknapp.com

VIRGINIA

Shapiro & Brown, LLP
703.449.5800
shapiroandbrown.com

WASHINGTON

Houser & Allison, APC
206.596.7838
houser-law.com

Wright Finlay & Zak, LLP
949.438.1265
wrightlegal.net

WISCONSIN

Johnson, Blumberg & Associates, LLC
312.541.9710
johnsonblumberg.com

O'Dess and Associates, S.C.
414.727.1591

Randall S. Miller & Associates
248.636.2723
millerlaw.biz

ASSOCIATE MEMBERS

a360inc
248.432.9360
a360inc.com

Alacrity Services
866.953.3220
alacrityservices.com

ProVest
813.877.2844, ext. 1424
provest.us

ATA National Title Group
248.341.4922
atatitle-nls.com

Baker Donelson
404.589.3408
bakerdonelson.com

C2C Title Services
844.532.3776
c2cpropertyservices.com

Claims Recovery Financial Services
585.589.0800
crfservices.com

Eviction Support Services
844.358.4038
evictionsupportservices.com

Firefly Legal
708.326.1410
fireflylegal.com

Firm Solutions
813.466.1100
firmsolutions.us

Global Strategic Business Processing Solutions
212.260.8813
GlobalStrategic.com

National Creditors Bar Association
202.861.0706
creditorsbar.org

Nationwide Title Clearing
800.346.9152
info.nwtc.com/home

LEGAL LEAGUE 100
QUARTERLY

1349 EMPIRE CENTRAL DRIVE,
SUITE 900
DALLAS, TEXAS 75247
214.525.6700