States: North Carolina

North Carolina Update: In Range, But On Target? Evolving Title Curative Legislation

By: John Mandulak–Hutchens Law Firm

If you mention the number .410 to a hunter, memories of their first shotgun and firearms safety courses come to mind. It's only fitting that House Bill 410 is North Carolina's shotgun approach to solving manufactured home title issues, a field that's been largely untouched since 2002. However, opinions differ as to whether the legislature hit its target or if they need to reload and re-aim.

The manufactured housing statutes enacted in 2002 provided a measure to permanently affix a home to land pursuant to N.C. Gen. Stat. §47-20.6 and N.C. Gen. Stat. §47-20.7. They allow the owner of both the home and land to file a document with the register of deeds that permanently affixed the home to the land on recordation.

However, if you flushed out a certificate of title during your title hunt, you faced two unpalatable options for resolution, the first of which involved stalking the cooperation of the listed parties. Filing a civil suit also got the job done, but like a fox hunt, it expended a great amount of time and energy. Filing repossession affidavits under the UCC remained a viable option in certain cases, but its season was short and it gave rise to poachers who filed such repossession forms far beyond their intended scope.

Enter House Bill 410, which alters the provisions of N.C. Gen. Stat. §20-109.2. Section (a1) is a new part of this law, which allows an owner of real property to file an affidavit with the NC DMV to cancel a manufactured home title. Under this section, it is assumed that the title is surrendered when it can not be located, so the affiant does not have to be the listed owner on the certificate of title but must submit a copy of the tax card confirming the home is taxed as real property in lieu of the title.

At first blush, this appears to be a magic bullet, but the gun jams under section (b)(3), which if read literally still requires the affiant to assert he owns both the land and the manufactured home. Others reach an opinion that the wording of section (b)(3) is a typographical error and that the statute is a dog that will hunt as drafted.

One thing is clear: Any lien holder must release its interest prior to cancellation, meaning that the old cancellation methods apply if you encounter a stubborn or dissolute lien holder. Calling your title insurance carrier before canceling a certificate of title under this provision is wise and should keep you from shooting yourself in the foot.

States: Pennsylvania

Pennsylvania Update: Legislative Response to Beneficial Consumer Discount Company vs. Vukmam

By: Stephen Hladik and Bill Miller–Kerns, Pearlstine, Onorato & Hladik, LLP

In previous editions of the Legal League Quarterly, Beneficial Consumer Discount Company vs. Vukman was highlighted. Recently, the Pennsylvania Supreme Court overruled the Superior Court, in a victory for lenders. In the Superior Court case, the court reviewed a challenge to an Act 91 Notice of Intent to Foreclose. This form was promulgated by the Pennsylvania Housing Finance Agency, and any lender was required to use the notice. Act 91 required that the model notice inform borrowers of both their right to meet with consumer counseling or with the lender. In the notice that was adopted, there was no line notifying of the right to meet directly with the lender. As such, the Superior Court found the notice defective, struck the sale, and dismissed the foreclosure. The court noted that failure to properly notify a borrower of intent to foreclose deprived a court of subject matter jurisdiction. With that decision, a significant number of pending foreclosures were left up in the air.

The Pennsylvania Supreme Court, at 2013 WL 5354330 (Pa. 2013), stated that "the provision of a defective Act 91 notice does not deprive the courts of subject matter jurisdiction." The Supreme Court held that "in the absence of a clear legislative mandate, laws are not to be construed to decrease the jurisdiction of the courts." Id. The "overarching assertion that Act 91 imposes jurisdictional prerequisites on mortgage foreclosure actions is unsupportable." Id.

The Supreme Court distinguished between procedure and jurisdiction and held that "the Act 91 notice requirements appear to fit comfortably in the procedural realm as they set forth the steps a mortgagee with a cause of action must take prior to filing for foreclosure." Id. The Supreme Court held that "the Act 91 notice requirements certainly do not sound in jurisdiction as they do not affect the classification of the case as a mortgage foreclosure action." Id. The Supreme Court further emphasized that "the lack of explicit language in Act 91 prescribing that such requirements are jurisdictional cautions against court from treating them as such." Id.

The court, as persuasive authority, cited to a New Jersey Supreme Court decision, U.S. Bank National Association v. Guillaume, 38 A.3d 570, 587 & n. 4 (N.J. 2012), as New Jersey's pre-foreclosure notice statute is "substantially similar to Act 91." In Guillaume, the New Jersey Supreme Court decided that a defect in a legislatively mandated pre-foreclosure notice did not eliminate the court's jurisdiction, as such a draconian result, if intended by the New Jersey legislature, would have been affirmatively stated by the legislature. Id. With the ruling, the Supreme Court has now settled an issue that put to rest any title questions related to the numerous pending and completed foreclosures.