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BWW LAW GROUP, LLC

# BWW Law Newsletter

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**We at the BWW Law Group, LLC are excited to present to you the next installment of our Newsletter.** The BWW Law Group, LLC was established in 1996 and represents the mortgage servicing community in Maryland, Virginia and the District of Columbia. Within each jurisdiction we have dedicated and experienced foreclosure, bankruptcy, eviction, title curative, and litigation attorneys and paralegals, who are ready and willing to assist you. Each quarter, through this publication, these attorneys will provide the most current and relevant legal

news to the servicing industry. Please feel free to reach out to our offices at any time with any questions.

BWW Law Group, LLC is a Martindale Hubbell AV rated law firm and is a member of the United States Foreclosure Network (USFN), The American Legal & Financial Network (ALFN), The Mortgage Bankers Association (MBA), and REO Managers Association of California (REOMAC).

## GOVERNMENT SHUTDOWN LEGISLATION AND THE IMPACT ON FORECLOSURES

*Elizabeth C. Jones – Attorney (Maryland)*

On May 13, 2019, Maryland Governor Larry Hogan signed legislation providing additional protections to federal, state, and local government workers in the event of a government shutdown. The legislation amended MD Code, Real Property § 7-105.1, the statute that provides the guidelines for pursuing a foreclosure action in Maryland. The amendment added a new section to Real Property § 7-105.1 that requires the court to stay any foreclosure proceedings against owner occupied property where the defendant provides sufficient evidence to satisfy the court that the defendant is employed by the federal, state, or local government within the state, and that the defendant has been

involuntarily furloughed without pay.

The property must be owner occupied for this protection to apply. The amendment applies to both employees who are furloughed but are required to report to work, and furloughed employees who are not required to report to work during the government shutdown. The amendment does not provide a specific time period during which the foreclosure action must be stayed. Rather, it leaves the time period to the court's discretion, and provides that the court may grant a stay for whatever time the court considers reasonable. The only restriction is that the court may not grant a stay that ends more than thirty days

after the end of a government shutdown unless the defendant or other party to the action provides sufficient cause as determined by the court. The amendment was treated as emergency legislation, and therefore it became effective as of the date it was signed on May 13, 2019. As of this date, any party pursuing a foreclosure action in Maryland should be prepared for the court to grant defendants' requests to stay foreclosure proceedings during a government shutdown.



# SMALL BUSINESS REORGANIZATION ACT (SBRA) SIGNED INTO LAW

Lauren Hunt – Attorney (Virginia Bankruptcy)

The Chapter 11 Bankruptcy process has historically been geared toward large, complex corporate reorganization, leaving smaller companies to struggle through a system not designed for them. But the recent enactment of the Small Business Reorganization Act (H.R. 3311) seeks to solve that issue. The main function of the new law, initially introduced to the legislature this summer by Representative Ben Cline of Virginia, is the addition of subchapter V to Chapter 11. This subchapter is aimed at streamlining the Chapter 11 process for small business debtors, as well as providing restructuring tools specifically geared for their unique needs. After garnering bipartisan approval in both the House and Senate, the bill was signed into law by President Trump on August 23rd, 2019.

Proponents of the new law claim its provisions will reduce liquidations for small business debtors as well as increase the recoveries by their creditors. They hope to achieve this through a two-pronged approach of increasing oversight of the bankruptcy process and reducing costs and burdens on small business owners.

## HIGHLIGHTS OF THE SMALL BUSINESS REORGANIZATION ACT

### *Increased Oversight and Efficiency*

- Appointment of a Standing Trustee: A standing trustee will be appointed to oversee small business Chapter 11 bankruptcies, serving a similar function to Chapter 12 or 13 trustees.
- Plan Deadline: Small business debtors must submit a reorganization plan to the court within 90 days of filing.
- Initial Status Conference: Every small business debtor will be required to attend an initial status conference within 60 days of filing to ensure the case is proceeding in a timely and cost-efficient manner.

### *Reducing Costs, Procedural Burden, and Corporate Strain*

- Retaining Business Control: Owners of a small business debtor are allowed to maintain a stake in the company, provided there is no evidence of discrimination between each type of claim or interest.
- Eliminating Committee of Unsecured Creditors: Small business debtors will no longer have an official committee of unsecured creditors appointed for their Chapter 11 bankruptcy, nor will a disclosure statement be required.

# THE RE-CODIFICATION OF TITLE 55 OF THE VA CODE

Jessica S. Tate – Supervising Attorney (Virginia)

Title 55 of the Virginia Code codifies the conveyance of real property, settlement and recordation of transfers of real property, and common interest communities located in Virginia. Senate Bill 1080, which was signed into law by the Governor and will be effective as of October 1, 2019, is an effort to improve Title 55 by organizing the Chapters in a more logical way and removing obsolete and duplicative statutes.

The changes to Title 55 are primarily organizational. The new Title 55.1 has been organized into 29 Chapters that are grouped into five different subtitles. The greatest impact our firm and its clients will see from these administrative changes is the need to update some existing document templates (e.g. Substitute Trustee's Deed, Corrective Affidavit, etc.) to reflect the new code section numbers that will be implemented as of October 1, 2019.

There is at least one nuanced (though noteworthy) substantive change that will address the gap in procedures outlined in the current version of Title 55 for how to terminate a tenancy that continues after foreclosure. Currently, landlord-tenant relations following a foreclosure sale are addressed in two separate chapters which causes an inadvertent void for purchasers of tenant-occupied property who would not otherwise be subject to the Virginia Residential Landlord Tenant Act (VRLTA). This void results from the

nebulous interrelationship between VA Codes §55-225.10 (Notice to tenant in event of foreclosure) and §55-248.37 (Periodic tenancy; holdover remedies) which is part of the VRLTA. For cases in which there is no written lease or for cases in which the lease does not specify how to terminate the existing tenancy, current §55-248.37 provides that the landlord may terminate a month-to-month tenancy by serving written notice on the tenant at least 30 days prior to the next rent due date, unless the rental agreement provides for a different notice period. However, the current code is silent as to any specific remedy for a purchaser who is not subject to the VRLTA. This problem is best illustrated with the example below:

A 3rd party purchaser (3PP) owning no other rental property (and therefore not subject to the VRLTA) buys a property at a foreclosure sale which is occupied by a tenant who has no written lease or has a written lease containing no termination provisions. The 3PP then has to rely on §55-225.10(C) which, in the absence of a lease, requires notice to be given in accordance with §55-248.6, which is silent on how to terminate a tenancy if the lease doesn't govern, or §55-222 which governs only non-residential property and multifamily residential buildings.

After the update, landlord-tenant relations will be governed solely by Chapter 12 of Title 55.1 and all landlords, regardless of how many





tenant-occupied properties they own, are subject to its terms. This will make it clear that any landlord who wishes to terminate the month-to-month tenancy that results after a foreclosure sale shall give written notice of such termination in accordance with the terminated rental agreement or at least 30 days' notice, in writing, prior to the next rent due date as prescribed by VA Code §55.1-1410(A).

These changes to Title 55 should result in greater clarity for lenders and improved accessibility for borrowers and tenants once they are implemented.



## MEDIATION UPDATES IN WASHINGTON, D.C.

*Patrick M. A. Decker – Attorney (Maryland and District of Columbia)*

Due to recent updates to mediations in the District, not all defendants who request mediation are guaranteed the opportunity to mediate. In an overall effort by the Superior Court to reduce the number of unnecessary mediations, changes have been made to the two types of mediations in the District: Early Mediations and Litigation Mediations.

### **Early Mediation:**

Previously, when a borrower appeared at the initial scheduling conference and requested a mediation, the magistrate judge entered a full mediation scheduling order with all applicable deadlines and dates including: the date by which a complete application is due to the servicer, the pre-mediation status hearing, the mediation session, and the post-mediation status hearing. Over time it became apparent to mediators that a large number of mediations were unproductive as many borrowers submitted few or no financial documents for review prior to mediation. In response, the schedule has been bifurcated. Now, defendants are required to first submit a complete application before a mediation date is scheduled. The court initially provides a deadline for

submission of a complete application and a pre-mediation status hearing date. If the parties appear at that hearing, and a complete application has been submitted, the court will schedule a mediation session and a post-mediation status hearing. If a complete application has not been submitted, the lender may request that the case be removed from the mediation calendar and transferred to an associate judge who may enter judgment. The magistrate may also exercise its discretion if a partially complete package has been submitted and provide additional time before transferring the case. This streamlined process has been successful in reducing the number of mediations for which no financials have been submitted or that borrowers fail to attend.

### **Litigation Mediation:**

Contested cases are transferred to a litigation calendar if they are not resolved by Early Mediation. After the parties engage in discovery, they are ordered to participate in a Litigation Mediation. Previously, the parties participated in the mediation, as scheduled, regardless of the posture of the case. The Civil Division now requires that all parties submit a Mediation Readiness

Certificate at least 14 days prior to the mediation. The attorney signing the certificate attests that the party is ready for mediation and that there are no pending discovery disputes or motions that would impair its ability to mediate. If any party does not indicate its readiness for mediation, then the case is set for a status hearing and the court will determine if and when a new mediation date will be scheduled. This new requirement has also resulted in a reduction of unnecessary mediations, which is especially important for Litigation Mediations that require, by rule, the personal appearance of a representative from the lender.

In conclusion, the above improvements to the mediation processes in the District have reduced the number of unnecessary and unproductive mediations. While your mediation specialists should be aware of the updates, BWW carefully monitors all deadlines, and thus no additional efforts are required by our clients.

**BWW LAW GROUP, LLC** - Representing the Mortgage Banking Industry in Maryland, Virginia and the District of Columbia

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