

ROSENBERG & ASSOCIATES, LLC

APRIL 2019 • VOLUME 3, ISSUE 9



Rosie Highlights

Attorney Spotlight - Page 3

Maryland Updates:

Sharma News - Page 4

MD HB425 - Page 5

Virginia Update: Recission
as a Remedy - Page 6

District of Columbia Update:
Federal Worker Housing

Relief Act - Page 9

Industry Events - Page 11

The Rosie Challenge - Page 12

Internal News - Page 13

Firm Memberships & Profes-
sional Affiliations - Page 14

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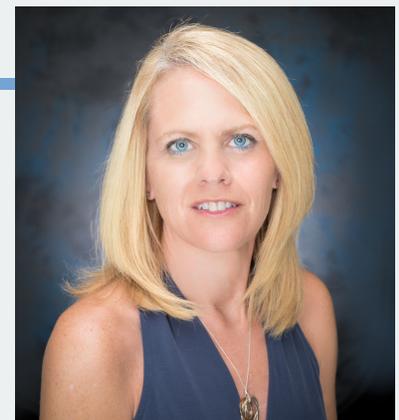
EST. 2019

DARE TO TAKE THE ROSIE CHALLENGE

Go to Page 12 for Details...

SCHEDULE A MEETING/TRAINING

MARYANN MACK, DIRECTOR OF CLIENT RELATIONS
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**ATTORNEY
SPOTLIGHT**

Nanita Cornish

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Nanita Cornish joined our firm as an Associate Attorney in our Chesapeake, Virginia office in March, 2018. She is a well-respected attorney in the Tidewater/Peninsula area and has been litigating cases, including jury trials, for 18 years.

Nanita earned a Bachelor of Science Degree from Old Dominion University and received her Juris Doctor from the University of Richmond, T.C. Williams School of Law.

She practices real estate law, with a focus on foreclosure, bankruptcy, eviction, firm defense and litigation. Nanita is admitted to practice before all state courts in Virginia and the U.S. Bankruptcy and U.S. District Courts for the Eastern District of Virginia.

Nanita currently lives in Suffolk, Virginia with her husband Terrence and her three children, Isaiah, Jordan and Marissa. She enjoys spending time with her family, reading and being active in her church and community.



Sharma News

In response to the Court of Appeals decision in the Sharma case, the Maryland General Assembly recently took up legislation to statutorily overturn the decision.

Maryland SB485/HBO593 was introduced explicitly to overturn Sharma by changing the Maryland Collection Agency Licensing Act to specifically include mortgage foreclosures within the definition of consumer claims and to bring mortgage lenders within the realm of the licensing statute.

This would have required lenders to obtain a debt collector's license in order to pursue foreclosures in the state.

Fortunately, this bill was voted down by the Finance Committee, 9-2. While this does not necessarily doom the bill, it is highly damaging to its chances of being passed, and virtually ensures it will not be enacted.

We will continue to monitor it, and advise further if anything changes.

**For further discussions,
contact John Ansell
John.Ansell@Rosenberg-Assoc.com**

Proposed Maryland HB425

Maryland HB425 has been introduced in the Maryland General Assembly. If passed, this bill would specifically impact mortgage servicers by extending the statute of limitations for claims of unfair, abusive, or deceptive trade practices. This proposed statute would apply specifically and only to mortgage servicers. On its face, the proposed law would extend the statute of limitations for unfair, abusive, or deceptive trade practices, as defined elsewhere in the Maryland Code, to the later of twelve years after a foreclosure sale, or three years after the homeowner discovered or should have discovered the unfair, abusive, or deceptive trade practice. It is important to note that unfair, abusive, or deceptive trade practices are defined fairly broadly under the Maryland Code. In addition to a number of enumerated practices, specifically includes violations of a number of other statutes, the most relevant being the Maryland Consumer Debt Collection Act and the federal Servicemembers Civil Relief Act. Because this extends to the later of the two dates, it would at a minimum extend the statute of limitations to twelve years, and it is not inconceivable that there is a scenario wherein the extension could run the entirety of the life of the loan, depending on how a court decides a borrower should have known of a potential violation. This means that a servicers' potential liability on a loan could theoretically extend for decades.

**For further discussions,
contact John Ansell
John.Ansell@Rosenberg-Assoc.com**

Virginia Circuit Court Decision Highlights Increased Likelihood of Rescission as a Remedy in Post-Foreclosure Litigation

The Norfolk Circuit Court recently handed down a new opinion regarding the availability of foreclosure rescission in Virginia. In recent years, Virginia courts have been dismissive of post-sale requests for rescission, except in instances of fraud, collusion, or inadequate sale price. However, in *Ononuju v. Va. Hous. Dev. Auth.*, 2019 Va. Cir. LEXIS 33, the circuit court overruled the lender's demurrer and held that rescission is also available where there is a material breach of the deed of trust. In order to understand the circuit court's decision, one must look backwards at the Virginia Supreme Court cases that led to this result.

Ononuju specifically concerns a request for rescission based on a material breach of the deed of trust caused by the failure to hold a face-to-face meeting prior to foreclosure of a HUD loan. In *Matthews v. PHH Mortg. Corp.*, 283 Va. 723 (2012) the Virginia Supreme Court held that the face-to-face meeting is a condition precedent to foreclosure of a HUD loan and that failure to hold the meeting is a material breach of the deed of trust. In *Squire v. Va. Hous. Dev. Auth.*, 287 Va. 507 (2014), the Court issued a similar ruling to *Squire* and, additionally, upheld the lower court's decision to deny rescission because it was not an available post-sale remedy.

In 2015, almost exactly one year after the *Squire* decision, the Supreme Court issued *Ramos v. Wells Fargo*, 289 Va. 321 (2015). In *Ramos*, the Court again considered an alleged failure to hold the face-to-face meeting. The Court explicitly held that rescission is not an available remedy for an alleged failure

VA Circuit Court Decision, continued...

to hold the face-to-face meeting. See Ramos at 324. Based on its earlier holding in Squire, the Court stated that rescission was only available in cases of fraud, collusion, or a grossly inadequate sale price. After Ramos, the landscape appeared to be settled.

However, in June 2016, the Supreme Court issued Parrish v. Fannie Mae, 292 Va. 44 (Va. 2016). The primary holding in Parrish relates to post-foreclosure eviction. However, the Court also discussed the remedy of rescission and stated that the list in Ramos is not exhaustive. See Parrish at 52. In addition to the three possibilities in Ramos, the Court opined that a sale may be set aside when it was “conducted in material breach of the deed of trust.” Id. With that one sentence, the Virginia Supreme Court changed the law on availability of rescission.

The Norfolk Circuit Court has followed these previous cases and issued the decision in Ononuju. Like in Matthews and Squire, the failure to hold the face-to-face meeting is a material breach of the deed of trust. As stated in Parrish, rescission is available as a remedy for the breach. It is worth noting that, in making this decision, the circuit court considered the purchaser’s knowledge, suggesting that there may have been a different result if the property had sold to a third party.

This case will bolster plaintiffs in other jurisdictions and provide circuit courts a basis to allow cases to continue when rescission is the requested remedy. In response to this development, lenders will want to continue to be

VA Circuit Court Decision, continued...

diligent in meeting the HUD requirement for face-to-face meetings prior to foreclosure. Further, when faced with a pre-sale challenge to a foreclosure, lenders and servicers may want to be discussing whether the challenge is something that could withstand demurrer and lead to lengthy litigation. Finally, it is worth considering whether servicers and lenders want to appeal some of these cases to the Virginia Supreme Court when receiving negative rulings. The plaintiff's bar has been consistently appealing cases to the Virginia Supreme Court and they are seeing results. At some point, the lenders side may need to do the same.

Virginia post-foreclosure litigation has become much more complicated following the Parrish decision, highlighted by the recent decision in Norfolk to allow rescission as a post-sale remedy for a material breach of the deed of trust. More circuit courts will likely follow. When that happens, be sure to reach out to your Virginia counsel for review and discussion.

For further discussions,
contact Sara Tussey
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D.C. Council Legislation Affecting Judicial Foreclosure

On January 22, 2019, the Council of the District of Columbia unanimously passed the Federal Worker Housing Relief Emergency Act (“The Act”). The Act awaits the signature of Mayor Muriel Bowser, who is expected to sign it. The legislation is a temporary measure meant to protect furloughed federal employees and contractors affected by the partial federal government shutdown of 2018-2019, from eviction, late fees, and foreclosure sales. The Act also protects co-residents of federal employees and federal contractor employees.

Borrowers covered by the Act are protected from foreclosure actions from the first unpaid payday until (1) 30 days after the effective date of an appropriations act or continuing resolution, or (2) until 90 days from the first unpaid payday, whichever is earlier. If a lender initiates a foreclosure proceeding in the Superior Court against a covered borrower during the covered period, the borrower may move the court to stay the proceeding until the covered period expires. The Act is set to be in effect only for 90 days, starting from when the Mayor signs her approval.

While the relief offered to borrowers under the Act could elongate the foreclosure timeline, it does not require firms to significantly change its foreclosure procedures. This is because relief under the Act is not automatic and merely requires an additional filing to the court. Relief must first be requested by motion by the borrower.

D.C. Council Legislation, continued...

Creditor attorneys must then be prepared to file possible responses in opposition if there are deficiencies in the borrower's motion. If relief is ultimately granted, the effect would be a delay in meeting the foreclosure milestones of (1) an entry of a judgment and (2) setting and holding of a sale. In addition, underwriters should be mindful that the disruption in pay due to the shutdown could result in borrowers submitting financial documentation reflecting \$0 in earnings, distorting underwriting's analysis, and ultimately resulting in drastically different loss mitigation outcomes compared to if the borrower was not furloughed.

This bill has been passed by the D.C. Council but has not been signed by the Mayor, which is necessary before this is enacted into law. We are monitoring this and will follow up if and when this happens.

For further discussions,
contact Tracy Buck
Tracy.Buck@Rosenberg-Assoc.com
or
contact GK Sanchez
GK.Sanchez@Rosenberg-Assoc.com

USFNStruct - April 9-10, 2019

Sara Tussey presented on training panels
at this event in Dallas, TX

IMN - 6th Annual Mortgage Servicing Rights Forum

Diane Rosenberg & Maryann will be attending
this event in New York City on April 15-16, 2019

IMN - NPL RPL & Mortgage Notes Symposium

John Ansell will be presenting during this event
in Dana Point, CA on June 3-4, 2019

WILLPower Summit - April 30-May 1, 2019

John Ansell will be attending this event in Dallas, TX

Industry Events

If you plan to attend
these upcoming events,
we would welcome the
opportunity to schedule
time to meet with you.

Contact Maryann by
calling- 240 278-0838

USFN Forum - June 3-5, 2019

Diane Rosenberg & Tracy Buck plan to
attend this event in Nashville, TN

NAF - Non Prime Auto Financing

Mark Meyer will be at this conference in
Dallas, TX on June 5-7, 2019

USFN Legal Issues - July 11-12, 2019

Sara Tussey plans to attend this event
in Chicago, IL

Stay tuned for more events in our upcoming
Newsletters

Reminder → Our 2019 Rosie Challenge



Dare to take on this exciting challenge. Starting now through Dec 1, 2019, email or text us your bucket list experience that you complete in 2019.

At the end of the year we will reward the person with the most exciting tale. Send your experience to us with the caption "Rosie Challenge" via text 240.278.0838 or email maryann.mack@rosenberg-assoc.com

Share your tale with us and inspire us!

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INTERNAL NEWS

Welcome

Cristián Alec Mendoza,
Associate Attorney, MD



GOD BLESS
AMERICA

We recognize & thank our 5 year
milestone employees:

Kristi Lane
JR Smarrelli
Keziah Sterling
Madelyn Vazquez
Robert Wardrick
Candace White

Our office will be closed on Memorial
Day, May 27, 2019 and on
Independence Day, July 4, 2019

Firm Memberships & Professional Affiliations



DEFAULT ATTORNEY GROUP

National Perspective at the State Level



Congratulations to USFN's
2018 Award of Excellence Recipients!!

