

FOREIGN TRUSTS DO NOT NEED LICENSING IN FORECLOSURE PROCEEDINGS

The Maryland Court of Appeals' decision in *Blackstone v. Sharma* provides much-needed clarity to mortgage debt owners. The case, which consolidated four separate appeals, centered on whether the Maryland Collection Agency Licensing Act (MCALA) requires principal actors of Maryland's mortgage market to obtain a collection agency license. *Blackstone*, 2018 WL 3691347, at *1 (Md. Aug. 2, 2008).

The court held that foreign statutory trusts do not need to be licensed as collection agencies under MCALA before initiating foreclosure proceedings in the state. The court analyzed the plain language and legislative intent of MCALA, as well as subsequent and related legislation, to reach its determination that statutory trusts fall outside the regulatory scope of the act. The court's decision clarifies Maryland foreclosure procedures — in effect, green-lighting those foreclosure actions that were previously halted by lower court decisions.

Lower Court Decisions

In each of the lower court cases, the borrowers obtained mortgage loans secured by deeds of trust. After the borrowers defaulted, the banks transferred the loans and all beneficial interests in the deeds of trust as part of a pool of mortgage loans to foreign statutory trusts. A separate loan servicer was assigned to communicate with the borrowers and collect monthly mortgage payments. Per Maryland foreclosure law, the trustees of the statutory trusts appointed substitute trustees to initiate foreclosure actions against the defaulting borrowers.

In response, the defaulting borrowers filed counter-complaints and moved to dismiss or enjoin the foreclosure actions. The borrowers argued that that the foreign statutory trusts were required to hold a collection agency license — and thus violated Maryland debt collection law when they attempted to collect mortgage payments through a loan servicer and when they attempted to foreclose through the appointed substitute trustees.

MCALA's definition of a "collection agency," as amended by the 2007 department bill, covers "a person who engages directly or indirectly in the business of . . . collecting a consumer claim the person owns, if the claim was in default when the person acquired it." Accordingly, each lower court

dismissed the foreclosure actions, finding that the foreign statutory trusts were subject to MCALA's licensing requirements because they were engaged in the business of a "collection agency" by acquiring mortgage loans in default and then having substitute trustees pursue foreclosure actions to collect that mortgage debt.

Maryland Court of Appeals

The main issue on appeal was whether the Maryland General Assembly intended to require that foreign statutory trusts obtain a collection agency license under MCALA before pursuing an *in rem* foreclosure proceeding. The court resolved that issue by conducting a legislative intent analysis, finding that it was not the intent of the General Assembly to require statutory trusts to obtain a collection agency license.

First, the court determined that the language of MCALA is ambiguous as to whether the General Assembly intended to require licensure for foreign statutory trusts as collection agencies. The court then examined the legislative history of MCALA and determined that the General Assembly was purely concerned with abusive practices within the collection agency industry when it first enacted the collection agencies licensing statute, which exempted mortgage industry actors (including foreign statutory trusts).

Next, the court found that the 2007 department bill, which amended the definition of a "collection agency," was merely enacted to fix a loophole in the MCALA licensing requirement. Initially, only "persons collecting for a third party" were subject to MCALA's licensing requirement. Because of that definition, collection agencies began purchasing the debt they sought to collect from their clients to fall outside the MCALA's definition of a "collection agency." The court found that department bill was intended to fix that loophole, noting that the department specifically requested the bill to close the loophole within the collection agency industry rather than to broaden the scope of MCALA to apply to other industries.

Lastly, the court examined subsequent and related legislation, finding that there is nothing in the history of Maryland's mortgage and foreclosure law to suggest that the General Assembly considered MCALA to require licensing for mortgage industry actors. The court noted that a task force, which was created to review Maryland foreclosure law and suggest changes, never mentioned MCALA's licensing requirement. Moreover, following the

task force report, the Maryland General Assembly enacted foreclosure law reform to set forth specific procedures and requirements for parties seeking an *in rem* foreclosure proceeding. However, the foreclosure reform never mentioned the requirement of an MCALA license.

Therefore, the court reversed the decisions of the lower courts and held that the General Assembly did not intend for foreign statutory trusts to obtain a collection agency license under MCALA before initiating foreclosure actions. As a result, foreign statutory trusts are outside of the scope of the collection agency industry regulated and licensed under MCALA.

Pepper Points

- The court's decision clarifies the requirements for foreclosure proceedings in Maryland. Specifically, foreign statutory trusts do not need to obtain a collection agency license under MCALA before initiating foreclosure actions.
- In light of the court's decision, borrowers cannot raise a trust's lack of a collection agency license as a defense to prevent a foreclosure action in Maryland. Consequently, foreclosure actions that were stopped following lower court decisions may now proceed.