

MARYLAND CASE PUTS THE BRAKES ON FORECLOSURES

On June 6, 2017, the Court of Special Appeals, Maryland's intermediate appellate court, issued an opinion in the combined cases of *Blackstone v. Sharma*, Sept. 2015 No. 1524, and *Shanahan v. Marvastian*, Sept. 2015, 1525. This case arose out of challenges filed in two foreclosure cases docketed there and can conservatively be said to have sent shock waves through some servicers and their attorneys in the state.

The case has resulted in hundreds, if not thousands of foreclosure cases being placed on hold, with their futures uncertain. Specifically, the Court of Special Appeals upheld the dismissal of two foreclosure actions initiated on behalf of a Delaware Statutory Trust (DST) because the DST was not a licensed collection agency pursuant to the Maryland Collection Agency Licensing Act, Md. Code, Bus. Reg. § 7-101, et seq. ("MCALA"). It also held that any judgment entered as a result of the foreclosure actions would be void. In declaring such matters void, as opposed to merely voidable, the court has cast a cloud on the title of potentially thousands of foreclosures that have been completed since MCALA was enacted in 2007. While MCALA has numerous exceptions (including for licensed banks, credit unions, and mortgage lenders), the licensing requirement applies "whenever the person does business as a collection agency in the State." Md. Code, Bus. Reg. § 7-301(a). Although it also contains an exception for trust companies, the court here explicitly found that the type of trust in question did not meet the criteria of "trust company." Notably, MCALA also does not apply if the debt in question was not in default at the time it was acquired.

In the wake of this opinion, numerous foreclosures already in process were put on hold, and many new cases were not filed while servicers and attorneys scrubbed files to ascertain if the licensing requirement was applicable. Further, many sales that had already been ratified but where the trustee's deed had not been recorded were also put on hold, thereby also putting many REO transactions in jeopardy. Many owners of these mortgage loans also have had to set up special entities to transfer loans specifically for the purpose of being able to obtain the license.

On November 30, 2017, the Maryland Court of Appeals (Maryland's highest appellate court) heard oral argument on the appeal filed in response to this opinion, as well as two related cases taken directly on appeal from the circuit

court as to the applicability of MCALA to foreclosure proceedings. It is unclear when the Court of Appeals will issue its opinion in the matter.

In the meantime, files will stay on hold, and unpaid defaulted loans will continue to weigh on servicers' and debt owners' operations. Needless to say, all of the affected parties are anxiously awaiting the outcome of the Court of Appeals ruling.