

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

In re:

MV REALTY PBC, LLC, *et al.*

Debtors.

.....

Chapter 11 Cases

Case No. 23-17590-EBK
(Jointly Administered)

.....

**LIMITED OBJECTION OF THE CONSUMER PROTECTION DIVISION OF OFFICE
OF THE ATTORNEY GENERAL OF MARYLAND TO DEBTORS' EMERGENCY
MOTIONS FOR ENTRY OF ORDER AUTHORIZING THEM TO EXECUTE AND
PROVIDE SUBORDINATION AGREEMENTS IN CONNECTION WITH
HOMEOWNER REFINANCINGS, AND TO ACCEPT PAYMENTS OF FEES PAID IN
ACCORDANCE WITH HOMEOWNER BENEFIT AGREEMENTS IN CONNECTION
WITH SALES OF RESIDENTIAL HOMES**

The Consumer Protection Division of the Office of the Attorney General of Maryland, (the "Division"), files this limited objection to Debtors', MV Realty PBC, LLC, *et al.* (collectively "MV Realty" or "Debtors"), Emergency Motions docketed at ECF Nos. 161 and 162 (the "Motions"). The Division does not intend to invoke the jurisdiction of this Court or waive sovereign immunity through this limited objection, which is filed solely to clarify the scope of Debtors' requests.

OBJECTION

1. Through the Motions, Debtors ask this Court for orders finding that the very conduct that is at the heart of several state court actions and investigations against Debtors and their principals may continue in the name of estate preservation. The orders Debtors seek from this Court would authorize them to, *inter alia*, record subordination agreements or lift and re-record Memoranda of Homeowner Benefit Agreements ("Memoranda") in conjunction with consumer refinancing transactions, and to collect fees assessed against consumers under Homeowner Benefit

Agreements (“HBAs”) from the proceeds of residential real estate sales, including early termination fees if they deem consumers to have breached the HBAs.

2. Under Maryland law, effective June 1, 2023, a “service agreement” that provides “for the purchase or sale of residential property” cannot exceed a one-year term and cannot “Purport to run with the land or bind subsequent bona fide purchasers.” Md. Code Ann., Real Prop. §§ 14-901, 903. Moreover, a “‘service agreement’ includes any memorandum, notice, agreement, or similar document that is used...to cause a service agreement to be recorded.” Md. Code Ann., Real Prop. § 14-901. A copy of Md. Code Ann., Real Prop. § 14-901, *et. seq.* is attached as Exhibit A. This statute was unanimously passed by the Maryland Legislature, and further provides that after the effective date residential service agreements may not be recorded and are void.

3. The Division contends that Debtors’ HBAs are service agreements as described under Md. Code Ann., Real Prop. § 14-901(d)(1), such that documents arising from Debtors’ Memoranda and HBAs cannot be recorded in Maryland land records and/or enforced by Debtors or Maryland courts. *See* Md. Code Ann., Real Prop. § 14-906(a).

4. The Division further contends that prior to the enactment of Md. Code Ann., Real Prop. § 14-901 *et seq.*, the Debtors practices, including but not limited to the offer and sale of HBAs to Maryland consumers, were unfair, deceptive, and abusive trade practices in violation of the Maryland Consumer Protection Act, Md. Code Ann. Com. Law § 13-101, *et seq.*

5. Additionally, since the enactment of Md. Code Ann., Real Prop. § 14-901 *et seq.*, violations of Md. Code Ann., Real Prop. § 14-901 *et seq.* are enumerated violations of Maryland’s Consumer Protection Act. *See* Md. Code Ann., Real Prop. § 14-905(a). As such, Debtors’ continued recordation of the HBAs and harvesting of any fees, including early termination fees,

from consumers pursuant to the HBAs would be both enumerated violations of the Consumer Protection Act as well as unfair, deceptive, and abusive trade practices in their own right. *See* Md. Code Ann. Com. Law §§ 13-301, 303. While this limited objection does not seek a ruling from this Court on the application of Maryland law, the Court should cautiously consider the Debtors request to circumvent state law. *See also*, 28 U.S.C. § 959(b) (requiring debtors in possession to maintain and operate estate property in accordance with state law); *In re White Crane Trading Co., Inc.*, 170 B.R. 694, 702 (Bankr. E.D. Cal. 1994) (“Congress has thus required that every debtor in possession and bankruptcy trustee manage and operate the debtor's property and business in compliance with state laws—good, bad, and indifferent—that apply outside of bankruptcy.”); 28 U.S.C. § 1334 (c)(1)-(2) (providing for mandatory and permissive abstention from hearing cases that should be decided under state law).

6. The Division objects to the Debtors’ requested orders to the extent that they can be interpreted as this Court (a) authorizing Debtors to violate Md. Code Ann., Real Prop. § 14-901, *et. seq.* and/or Maryland’s Consumer Protection Act or related consumer protection laws or (b) preempting Md. Code Ann., Real Prop. § 14-901, *et. seq.*, or Maryland’s Consumer Protection Act or related consumer protection laws. The Division does not intend to litigate the propriety of this Court granting the Debtors’ Motions through this Limited Objection. However, if the Court grants Debtors’ Motions, the Division asserts the Court’s Orders should expressly state that the Court is not:

- a) preempting the effect of any Maryland law;

b) rendering an opinion on the legality of Debtors' contemplated conduct or permitting Debtors to engage in any contemplated conduct that would violate Maryland law; or,

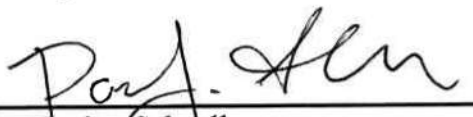
c) foreclosing any future argument by the Attorney General of Maryland with respect to Debtors' conduct including, but not limited to, whether Debtors' conduct constitutes cause under 11 U.S.C. § 1112(b)(4) or violates State law.

7. The Division objects to Debtors' attempt to maneuver around the legal consequences of their conduct and to continue operating in violation of Maryland law while simultaneously seeking to enjoin enforcement of these very same laws.

WHEREFORE, the Division requests that if this Court grants Debtors' Motions docketed at ECF No. 161 and/or 162, that this Court's Orders provide that the Court is not preempting the effect of any Maryland law, rendering an opinion on the legality of Debtors' contemplated conduct or authorizing Debtors to engage in any contemplated conduct that would violate Maryland law, or foreclosing any future argument by the Attorney General of Maryland with respect to Debtors' conduct.

Dated: November 7, 2023.

Respectfully Submitted,
ANTHONY BROWN
ATTORNEY GENERAL OF MARYLAND


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of November 2023 I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system and thereby served the other parties of record.



Parker Schnell, Bar No. 2302060008
Assistant Attorney General

Exhibit A

West's Annotated Code of Maryland
Real Property
Title 14. Miscellaneous Rules
Subtitle 9. Residential Property Service Agreements

MD Code, Real Property, T. 14, Subt. 9, Refs & Annos
[Currentness](#)

MD Code, Real Property, T. 14, Subt. 9, Refs & Annos, MD REAL PROP T. 14, Subt. 9, Refs & Annos
Current with all legislation from the 2023 Regular Session of the General Assembly. Some statute sections may be more current, see credits for details.

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West's Annotated Code of Maryland
Real Property (Refs & Annos)
Title 14. Miscellaneous Rules (Refs & Annos)
Subtitle 9. Residential Property Service Agreements (Refs & Annos)

MD Code, Real Property, § 14-901

§ 14-901. Definitions

Effective: June 1, 2023

[Currentness](#)

In general

(a) In this subtitle the following words have the meanings indicated.

Record

(b) “Record” means the act of adding any document or data that affects residential property to State or local government records.

Residential property

(c)(1) “Residential property” means real property improved by a dwelling unit that is designed principally and is intended for human habitation.

(2) “Residential property” includes:

(i) A residential condominium unit; and

(ii) A unit in a cooperative project, as defined in [§ 5-6B-01 of the Corporations and Associations Article](#).

Service agreement

(d)(1) “Service agreement” means an agreement where a service provider agrees to provide an individual services for:

(i) The maintenance of residential property that the individual owns; or

(ii) The purchase or sale of residential property.

(2) “Service agreement” includes any memorandum, notice, agreement, or similar document that is used by a service provider to cause a service agreement to be recorded.

Service provider

(e)(1) “Service provider” means a person that provides services to an individual through a service agreement for:

(i) The maintenance of residential property that the individual owns; or

(ii) The purchase or sale of residential property.

(2) “Service provider” includes any person acting as an agent or designee of a service provider.

Credits

Added by Acts 2023, c. 525, § 1, eff. June 1, 2023.

MD Code, Real Property, § 14-901, MD REAL PROP § 14-901

Current with all legislation from the 2023 Regular Session of the General Assembly. Some statute sections may be more current, see credits for details.

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Subtitle 9. Residential Property Service Agreements (Refs & Annos)

MD Code, Real Property, § 14-902

§ 14-902. Application of subtitle

Effective: June 1, 2023

Currentness

In general

(a) This subtitle applies only to a service agreement entered into on or after June 1, 2023.

Exclusions

(b) This subtitle does not apply to:

- (1) A home warranty or similar product that covers the cost of maintenance of a major home system such as plumbing, electrical, or heating, ventilating, and air-conditioning;
- (2) An insurance contract;
- (3) An option or right of refusal to purchase residential property;
- (4) A declaration created in the formation of a common interest community, as defined in [§ 1-801 of the Environment Article](#);
- (5) A maintenance or repair agreement entered into by a homeowners association, as defined in [§ 11B-101](#) of this article;
- (6) A mortgage loan or a commitment to make or receive a mortgage loan;
- (7) An agreement relating to the sale or rental of personal property;
- (8) Water, sewer, electrical, telephone, cable, or other regulated utility providers; or
- (9) A mechanics lien, as established under Title 9 of this article.

Credits

Added by Acts 2023, c. 525, § 1, eff. June 1, 2023.

MD Code, Real Property, § 14-902, MD REAL PROP § 14-902

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MD Code, Real Property, § 14-903

§ 14-903. Restrictions on service agreements

Effective: June 1, 2023

[Currentness](#)

A service agreement, or any part of a service agreement, may not:

- (1) Be effective for more than 1 year; or
- (2)(i) Purport to run with the land or bind subsequent bona fide purchasers;
- (ii) Purport to create a lien, encumbrance, or security interest on the residential property of a party to the service agreement;
or
- (iii) Allow the service provider to assign or transfer the right to provide services under the service agreement to another person without notice or the consent of a party to the service agreement.

Credits

Added by [Acts 2023, c. 525, § 1, eff. June 1, 2023](#).

MD Code, Real Property, § 14-903, MD REAL PROP § 14-903

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MD Code, Real Property, § 14-904

§ 14-904. Effect of violation

Effective: June 1, 2023

[Currentness](#)

A service agreement that violates [§ 14-903](#) of this subtitle shall be void and unenforceable.

Credits

Added by [Acts 2023, c. 525, § 1, eff. June 1, 2023](#). Amended by [Acts 2023, c. 49, § 5](#).

MD Code, Real Property, § 14-904, MD REAL PROP § 14-904

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MD Code, Real Property, § 14-905

§ 14-905. Construction with other laws

Effective: June 1, 2023

Currentness

Title 13 of the Commercial Law Article

(a) A violation of § 14-903 of this subtitle by a service provider is:

(1) An unfair, abusive, or deceptive trade practice within the meaning of Title 13 of the Commercial Law Article; and

(2) Subject to the enforcement and penalty provisions contained in Title 13 of the Commercial Law Article.

Other remedies

(b) This section does not prevent an individual from pursuing any other remedy provided by law.

Credits

Added by Acts 2023, c. 525, § 1, eff. June 1, 2023. Amended by Acts 2023, c. 49, § 5.

MD Code, Real Property, § 14-905, MD REAL PROP § 14-905

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MD Code, Real Property, § 14-906

§ 14-906. Recording

Effective: June 1, 2023

Currentness

Prohibition

(a) A service provider may not submit a service agreement that is in violation of § 14-903 of this subtitle to the clerk of a circuit court or a State or local agency for recording.

Penalties

(b) A service provider who violates subsection (a) of this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 6 months or a fine not exceeding \$1,000 or both.

Credits

Added by Acts 2023, c. 525, § 1, eff. June 1, 2023. Amended by Acts 2023, c. 49, § 5.

MD Code, Real Property, § 14-906, MD REAL PROP § 14-906

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MD Code, Real Property, § 14-907

§ 14-907. Denial of request to record

Effective: June 1, 2023

[Currentness](#)

The clerk of a circuit court or a State or local agency may deny a request to record a service agreement if it is determined that the service agreement is in violation of § 14-903 of this subtitle.

Credits

Added by [Acts 2023, c. 525, § 1, eff. June 1, 2023](#). Amended by [Acts 2023, c. 49, § 5](#).

MD Code, Real Property, § 14-907, MD REAL PROP § 14-907

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MD Code, Real Property, § 14-908

§ 14-908. Actual or constructive notice of lien

Effective: June 1, 2023

[Currentness](#)

A recorded service agreement that is in violation of [§ 14-903](#) of this subtitle may not provide actual or constructive notice of a lien arising from the service agreement to a subsequent bona fide purchaser of the residential property.

Credits

Added by [Acts 2023, c. 525, § 1, eff. June 1, 2023](#). Amended by [Acts 2023, c. 49, § 5](#).

MD Code, Real Property, § 14-908, MD REAL PROP § 14-908

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MD Code, Real Property, § 14-909

§ 14-909. Actions for determination that service agreements are void and unenforceable

Effective: June 1, 2023

Currentness

In general

(a) If a service agreement that is in violation of § 14-903 of this subtitle is recorded, any person with an interest in the residential property that is subject to a lien arising from the service agreement may bring an action against the service provider in the circuit court of the county where the residential property is located to request a determination that the service agreement is void and unenforceable under this subtitle.

Remedies

(b) If a service agreement is determined to be void and unenforceable under subsection (a) of this section, the person who brought the action may seek:

- (1) Compensatory damages; and
- (2) Reasonable attorney's fees and costs.

Credits

Added by Acts 2023, c. 525, § 1, eff. June 1, 2023. Amended by Acts 2023, c. 49, § 5.

MD Code, Real Property, § 14-909, MD REAL PROP § 14-909

Current with all legislation from the 2023 Regular Session of the General Assembly. Some statute sections may be more current, see credits for details.

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