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THE FAIR DEBT COLLECTION PRACTICES ACT AND CONVENIENCE FEES

Many creditors and loan or mortgage servicers provide the option to use certain payment methods, such as online or over-the-phone payments, to which they may apply convenience or service fees. Recently, class action plaintiffs have used state laws with a broader definition of “debt collector” than that in the Fair Debt Collection Practices Act to assert that these convenience fees violate the FDCPA’s restrictions. This article will discuss a recent, significant Fourth Circuit Court of Appeals ruling regarding the Maryland Consumer Debt Collection Act that, in combination with other cases challenging the imposition of fees, should serve as a warning to creditors and mortgage servicers that impose convenience fees.

By Matthew C. Luzadder, Becca J. Wahlquist, and Nathan T. Jamieson *

Borrowers are frequently offered a number of different payment options for submitting payments, including ACH, mailed paper check, or in-person payments. Creditors and mortgage or other loan servicers may also accept debit cards, or third-party services can be used to facilitate payments via credit card. The servicer is generally responsible for the payment processing costs for such payment methods, unless the cost is paid by the borrower, and thus many servicers may charge borrowers a fee for opting to use these payment methods, rather than sending a check. This additional payment fee is commonly known as a convenience fee, but may also be called a service fee or platform fee.

Historically, because the Fair Debt Collection Practices Act (“FDCPA”) applies only to debt collectors, its provisions do not apply to original creditors and would only apply to mortgage or loan servicers when a payment was in default. But state laws have carried

FDCPA restrictions to a broader range of companies, as evidenced by a recent Fourth Circuit decision that involved allegations under Maryland’s Maryland Consumer Debt Collection Act (“MCDCA”) tied to \$5 convenience fees that a mortgage servicer charged for online or phone payments. This issue of whether such fees could support MCDCA liability claims (and the FDCPA claims incorporated into the Maryland law) impacts not only mortgage servicers, but also most consumer lenders and companies servicing debt who offer various payment methods with convenience fees.

THE FOURTH CIRCUIT’S JANUARY 2022 ALEXANDER DECISION

In *Alexander v. Carrington Mortgage Services, LLC* (“*Alexander*”), Carrington Mortgage Services, LLC (“Carrington”) charged borrowers a \$5 convenience fee who opted to pay their monthly mortgage payments

*MATTHEW C. LUZADDER and BECCA J. WAHLQUIST are partners and NATHAN T. JAMIESON is an associate at Kelley Drye & Warren LLP. Their e-mail addresses are mluzadder@kelleydrye.com, bwahlquist@kelleydrye.com, and njamieson@kelleydrye.com.