

Collecting Fees on Loan Payments in Maryland May Not be Permissible

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Aylix K. Jensen offers analysis and insights for the debt collection industry in her monthly newsletter, *The Safe Harbor: Debt Collection Law Update by Aylix Jensen*. This monthly newsletter provides an update of changes and developments in the law that impact the debt collection industry. It highlights new debt collection laws and practices, discusses what these may mean for the collection industry, and provides tips to ensure compliance. This article is featured in the June 2022 edition.

On May 12, 2022, the Maryland Commissioner of Financial Regulation (the “Commissioner”) issued Industry Advisory Regulatory Guidance (the “Advisory”). The stated purpose for issuing the Advisory was two-fold: (1) to put the accounts receivable management industry on notice of the recent decision issued by the Court of Appeals for the Fourth Circuit in *Ashly Alexander, et. al. v. Carrington Mortgage Services, LLC*, Case No. 20-2359 (4th Circuit, January 19, 2022) and (2) to direct lenders and servicers to review their practices in charging consumer borrowers loan payment fees to ensure ongoing compliance and determine whether any improper fees have previously been assessed.

In the Advisory, the Commissioner advises that the Fourth Circuit in *Carrington* held that collecting fees on any form of loan payment violates the Maryland Consumer Debt Collection Act (“MCDCA”) if the fees are not set forth in the loan documents. In footnote 1 of the Advisory, the Commissioner clarifies that according to the Fourth Circuit, a lender or servicer may charge a fee if applicable law expressly authorizes such fee, but that the lender in *Carrington* could not identify any such law. The Commissioner notes that as a result of the holding in *Carrington*, any fee charged, whether for convenience or to recoup actual costs incurred by lenders and servicers for loan payments, must be specifically authorized by the applicable loan documents. The Commissioner advises that if such a fee is not provided for in the applicable loan documents, the addition of the fee would be deemed illegal. The Commissioner explains that it would be a violation of Maryland law to require consumers to amend their loan documents for purposes of inserting such fees or to direct consumers to a payment platform associated with the lender or servicer that collects a loan payment fee.

The Commissioner sets forth that while convenience fees have historically related to mortgage loans, the Fourth Circuit’s decision applies to all lenders and servicers of all extensions of consumer credit made to Maryland residents. Critically, the Commissioner opines that the decision reached in *Carrington* also extends to **any other person seeking to collect a debt**. The Commissioner recommends that if lenders or servicers decide to discontinue offering certain payment options, they must promptly notify their customers of such change and must work with their customers to

minimize any negative impact. Lastly, the Commissioner requests that lenders and servicers commence a review of their records to determine whether any improper fees have previously been assessed and undertake appropriate reimbursements to affected borrowers.

The biggest takeaway from the Commissioner's Advisory is that there may be potential liability for debt collectors who apply, or have previously applied, convenience fees on any form of loan payment in Maryland during the relevant limitation periods.

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Practice Areas

Financial Services

