

## Consumer Lending Update

APRIL 2019

### U.S. SUPREME COURT HOLDS NONJUDICIAL FORECLOSURES ARE NOT SUBJECT TO FDCPA

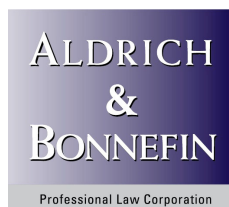
The U.S. Supreme Court recently held that the federal Fair Debt Collection Practices Act (federal FDCPA) does not apply to nonjudicial foreclosures. *Obduskey v. McCarthy & Holthus LLP*, 2019 U.S. LEXIS 2090 (Mar. 20, 2019). While the case may be important in certain contexts, it is far less important to California creditors who are subject to the California Rosenthal Fair Debt Collection Practices Act (Rosenthal Act), California Civil Code Section 1788 et seq. A California appeals court recently interpreted the Rosenthal Act as broad enough to cover nonjudicial foreclosure activities. *Davidson v. Seterus, Inc.*, 230 Cal. Rptr. 3d 441 (Ct. App. 2018). Thus, California creditors and mortgage servicers should stay in compliance with the Rosenthal Act, notwithstanding the holding in *Obduskey*.

The issue in *Obduskey* was whether a third party (a law firm) hired to pursue a nonjudicial foreclosure on a residence in Colorado was subject to the federal FDCPA. The federal FDCPA broadly regulates consumer debt collection, imposing several prohibitions and other requirements on “debt collectors,” generally defined as one that collects

debts on another’s behalf. The defendant law firm argued that it was not a “debt collector” under the federal FDCPA because it was not trying to collect a consumer “debt” but merely seeking to enforce a security interest in property (not an attempt to collect money). The U.S. Supreme Court agreed, unanimously holding that the federal FDCPA as drafted did not cover the enforcement of security interests.

The *Obduskey* holding is of almost zero practical importance to mortgage lenders and servicers with operations in California. The *Davidson* court interpreted the Rosenthal Act to apply to a mortgage servicer seeking to nonjudicially foreclose on a residential mortgage loan. While some California courts have ruled otherwise, the prudent course of action would be to assume the Rosenthal Act applies to mortgage foreclosure activities, as well as mortgage servicing more broadly. The Rosenthal Act requires covered debt collectors to comply with the Act’s own provisions as well as most of the federal FDCPA.

Debt collection remains one of the CFPB’s top areas of concern. For more information about the federal FDCPA and California’s Rosenthal Act, refer to Section III.K. of BCG Standard Procedures Manual #12, *Loan Workouts & Collections*, or contact Robert Olsen at [ROlsen@ABLAWYERS.COM](mailto:ROlsen@ABLAWYERS.COM).



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