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## Update on MV Realty and the Homeowner Benefit Program

### Description

As you have heard, MV Realty PBC, LLC and more than twenty affiliates and subsidiaries (â??MV Realtyâ?•) filed a Chapter 11 (Reorganization) bankruptcy in the Bankruptcy Court for the Southern District of Florida, on September 22, 2023. Case number is 23-17590-EPK. The Petition gave the principal business address for MV Realty within the Southern District of Florida (â??SDFIâ?•). Assets of the business were stated as between \$10M and \$50M, with liabilities of \$50M to \$100M.

An Order was entered Sept. 25<sup>th</sup> that consolidated the 35 separate filings into one consolidated case. MV Realty of Virginia, LLC was one of the affiliated entities. Also entered that day was an Order Authorizing Debtor in Possession to Continue Operation of Its Business. This is a commonly issued Order in a Chap. 11 bankruptcy, continuing usual business operations pending submission of a reorganization plan with the Court.

The Continuing Business Order (â??CBOâ?•) means that MV Realty is the party to turn to for payoff information on Homeowner Benefit Program (â??HBPâ?•) liens recorded in local land records. [Administration of payoffs, releases, etc. may be handled by Epiq Corporate Restructuring LLC, as it has been authorized to act as Notice, Claims, and Solicitations Agent.]

SDFI has granted Orders lifting the bankruptcy stay as to several state regulatory proceedings against MV Realty. The basis for such orders is that such proceedings are actions of the statesâ?? police power and are not in the nature of a debtor-creditor relationship. Among those released from bankruptcy as to exercise of state police powers are Massachusetts, North Carolina, and New Jersey Attorneys General actions. (The North Carolina Real Estate Commission also received a lift of stay order to proceed with a disciplinary action.)

MV Realty has filed its Schedules for debts, assets, statement of financial affairs, etc. What MV Realty has not yet filed is its Chapter 11 Plan of Reorganization. Also unknown at this time is what transpired at the initial status conference as hearing notes are being held *in camera* for three months.

At this moment, nothing has occurred in the bankruptcy proceeding that addresses existing liens in favor of MV Realty against real estate securing its 40-year contract for future listing services. In fact, these liens are currently assets of MV Realtyâ??s bankruptcy estate as they represent collectible and enforceable debts. The pending actions by state Attorneys General (such action has not been filed in Virginia) do not address release or removal of existing MV Realty liens. The AGs will use evidence of filing of these liens to prove their cases for fraud, consumer protection, or UDAAP (unfair, deceptive, or abusive acts and practices), and to prevent further unlawful actions by MV Realty. A couple of claims have been filed in the SDFI by homeowners seeking cancellation of their debts with MV Realty and requesting avoidance of the liens on their property. [These actions may seek to become class actions, but whether a class or not, the cost of administering these individual claims will probably outweigh the amount of the liens.]

A majority of states have adopted legislation in the last two years that prohibit agreements for delivery of future services that will not occur within one year. The predatory nature of extremely long contracts,

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such as the 40-year HBP, has been editorialized, and been the subject of local TV news spots and state AG suits. Adopted legislation to control these often-called Non-Title Recorded Agreements for Personal Services (NTRAPS) is unaffected by the bankruptcy. The adopted laws continue to prohibit such agreements in the future and often require that they not be recorded among land records by local officials. As a practical matter, several months before filing bankruptcy, MV Realty had suspended the HBP.

What is unaddressed by legislation, state AG action, the bankruptcy filing, or individual homeowners' suits, is what to do with the thousands of HBP liens filed around the country by MV Realty and similar businesses. For now, these items continue as valid and enforceable liens against real estate. If such a lien is encountered with a title search in Virginia, a payoff can be obtained from MV Realty and approved by SDFI. The lien should be reported as an exception to title and required to be paid and released. Given the bankruptcy filing, the liens are assets of MV Realty's estate and there will be an amount required to obtain a release. The Chap.11 Plan, when filed, may provide guidance on whether MV Realty (and its creditors) will insist on full value (i.e., up to a 3% charge on the sales price) or merely a return of the initial HBP payment.

Watch the VLTA *Examiner* for further updates.

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**Category**

1. Settlements
2. Uncategorized

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