

# BANKING ALERT

November 2021

## ***New Jersey to Resume Evictions for Residential Foreclosures***

In a Notice to the Bar dated November 19, 2021, the Honorable Glenn A. Grant, J.A.D., the Acting Administrative Director of the Courts, advised that, effective immediately, courts would resume “post-trial activity” in residential foreclosure matters, including the issuance of writs of possession.

The Notice stated that while New Jersey courts have continued to try residential foreclosure matters during the COVID-19 pandemic, post-judgment action had been suspended pursuant to a series of Executive Orders issued by the Governor, including the most recent that suspended residential property removals until November 15, 2021. With that suspension now expired, the Court, pursuant to the Notice, would resume post-judgment enforcement.

The Notice, however, did state that the Court is “exploring a possible interim process to allow eligible homeowners to seek to stay a sheriff sale on the basis that the homeowner may be eligible for federal financial assistance that would prevent the foreclosure pursuant to the American Rescue Plan.”

## ***Federal Trade Commission Issues Updates to Standards for Safeguarding Customer Information***

On October 27, 2021, the Federal Trade Commission (FTC) issued updates to the Standards for Safeguarding Customer Information promulgated under the Gramm-Leach-Bliley Act (GLBA) – commonly referred to as the “Safeguards Rule.”

The Safeguards Rule does not apply exclusively to banks, but applies to all entities that are “significantly engaged” in providing financial products or services, regardless of size -- *i.e.*, entities including check-cashing businesses, payday lenders, mortgage brokers, non-bank lenders, personal property or real estate appraisers, professional tax preparers, courier services, and businesses such as credit reporting agencies and ATM operators that receive information about the customers of other financial institutions. The primary changes include:

### **In This Issue**

New Jersey to Resume Evictions for Residential Foreclosures

**Pg 1**

Federal Trade Commission Issues Updates to Standards for Safeguarding Customer Information

**Pg 1**

Credit Report’s Description of Accounts as “Written Off” Did Not Violate Fair Credit Reporting Act

**Pg 2**

### **Office Locations**

#### **New Jersey**

210 Park Avenue

2<sup>nd</sup> Floor

Florham Park NJ 07932

973.302.9700

#### **New York**

1185 Avenue of the Americas

3<sup>rd</sup> Floor

New York NY 10036

212.763.6464

Follow Sherman Atlas on  
LinkedIn 

- Designation of a single qualified individual responsible for overseeing the information security program and periodic reporting;
- Identification of specific security risk assessment criteria and a requirement that such assessments be documented in writing;
- Specific required safeguards, including access controls, encryption, data disposal procedures, continuous monitoring, and penetration testing;
- Service provider selection criteria and a related requirement to periodically assess service providers based on perceived risk;
- Expansion of the definition of “financial institution” to include entities providing “finder” services incidental to financial activities.

The timeline for compliance with various elements of the expanded Safeguards Rule ranges from 30 days to one year following publication of the Final Rule in the Federal Register. The Final Rule can be found here: [16 CFR Part 314: Standards for Safeguarding Customer Information \(Final Rule\) | Federal Trade Commission \(ftc.gov\)](https://www.federalregister.gov/documents/2021/07/26/2021-14681-16-standards-for-safeguarding-customer-information-final-rule)

### **Credit Report’s Description of Accounts as “Written Off” Did Not Violate Fair Credit Reporting Act**

In *Schiff v. Experian Information Services, Inc., et al.*, No. CV 21-01167 (D.N.J. Nov. 9, 2021) the U.S. District Court for the District of New Jersey granted judgment in favor of defendant Experian Information Services (“Experian”) and dismissed Plaintiff’s claims for violation of the Fair Credit Reporting Act (“FCRA”).

Plaintiff defaulted on two debts owed to Capital One Bank (“Capital One”), which resulted in Capital One “charging-off” the accounts. Thereafter, Plaintiff entered into a settlement agreement with Capital One whereby Capital One discharged Plaintiff’s outstanding debts for payment of less than the full amount owed. Plaintiff’s Experian Credit Report listed the two accounts as “9,246 written off” and “6,883 written off.” The credit report also noted that both accounts were “paid in full for less than full balance.” The credit report also noted that the accounts were closed in August and September 2021, respectively. Plaintiff alleges the Experian credit report was “inaccurate and materially misleading” because it listed the accounts as “written off” even though both accounts were paid off as part of a settlement. After alerting Experian of the alleged inaccuracy, Plaintiff filed a complaint against Experian alleging willful and negligent violations of the FCRA.

The Court noted that, to state a claim under the FCRA, a plaintiff must demonstrate an inaccuracy in the credit report. The FCRA expressly allows credit reporting agencies to report negative credit information, including “accounts placed for collection or charged to profit and loss.” The Court found that a “charge off” qualifies as adverse credit information under the FCRA. Further, the court explained that whether a debt is later settled does not change the fact that the debt was previously written off and could be reported under the FCRA. Thus, the reporting of “write offs” in Plaintiff’s Experian credit report was well within the bounds of the FCRA.

Plaintiff further argued that the credit report was materially misleading because it suggested that the entire debt had been written off and remained unpaid. However, the Court ruled that, when read in its entirety, nothing reported in the credit report “would materially mislead a reader” into believing that Plaintiff’s entire debt was written off or remains unpaid. Accordingly, Plaintiff’s claims against Experian were dismissed in their entirety.

**Attorney Contact Information**

**Anthony J. Sylvester**  
Partner  
973.302.9713  
asylvester@shermanatlas.com

**Craig L. Steinfeld**  
Partner  
973.302.9697  
csteinfeld@shermanatlas.com

**Caitlin T. Shadek**  
Counsel  
973.302.9672  
cshadek@shermanatlas.com

**Anthony C. Valenziano**  
Counsel  
973.302.9696  
avalenziano@shermanatlas.com

This publication is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon with regard to any particular facts or circumstances without first consulting an attorney.  
© 2021 Sherman Atlas Sylvester & Stamelman LLP. All Rights Reserved.