

## Law Firms Conducting Foreclosures Are Not Debt Collectors

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In a win for foreclosure lawyers, today the United States Supreme Court ruled that law firms that conduct non-judicial foreclosures are generally not considered debt collectors for purposes of the Fair Debt Collection Practices Act.

In *Obduskey vs. McCarthy & Holthus LLP* (No. 17-1307), the Supreme Court addressed whether a law firm hired to carry out a non-judicial foreclosure on a Colorado home owned by the Petitioner was acting in the capacity of a "debt collector" for purposes of the FDCPA. The Petitioner claimed that the law firm failed to comply with the verification procedure mandated by the FDCPA.

The Court first noted the definition of "debt collector" under the FDCPA, which has two parts. First, a debt collector is "any person ... in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts. FDCPA §1692a(6). The Act then states that the term debt collector also includes "any person ... in any business the principal purpose of which is the enforcement of security interests."

The Court then noted that there was no dispute the law firm was attempting to enforce security interests, and therefore was at least subject to the specific prohibitions contained in FDCPA §1692a(6). But the Court then stated that only if the law firm fell within the primary definition's scope does the Act's other provisions, including the debt verification procedure, apply.

The Court then gave three reasons for its holding. First, by the text of the Act itself, an attorney who is only a security interest enforcer does not fall within the scope of the primary definition. Otherwise, the limited purpose definition would be superfluous. Second, the Court noted that Congress "may well have chosen to treat security interest enforcement differently from ordinary debt collection in order to avoid conflicts with state nonjudicial foreclosure schemes." Finally, the Court found that this result was supported by the legislative history of the Act, which suggested that the limited definition for security interest enforcement was the result of a compromise between competing versions of the bill.

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