

# Real Property, Financial Services, & Title Insurance Update: Week Ending February 11, 2022

February 12, 2022

## Real Property Update

- **Lease Option / Fair Market Value:** While the market value of property subject to a lease-purchase option is generally determined as unencumbered by the lease, specific language instructing appraisers to use the fixed rental revenue of the lease governed - [Boca Raton Cmty. Redevelopment Agency v. Crocker Downtown Dev. Assocs.](#), No. 4D21-873 (Fla. 4th DCA Feb. 9, 2022) (judgment affirmed)

## Financial Services Update

- **FCCPA, FDCPA & FDUTPA / Litigation Privilege:** Florida's litigation privilege does not conclusively apply by merely establishing there were pending foreclosure proceedings when a payoff statement was sent - [Salter v. PHH Mortg. Corp.](#), No. 0:21-cv-62318 (S.D. Fla. Feb. 9, 2022)
- **FCCPA, FDCPA & FDUTPA / Recording Fee:** Loan servicer's charges for a recording fee in excess of what is actually due and for a non-itemized "recoverable balance" may constitute a violation of the FCCPA, FDCPA, and FDUTPA - [Salter v. PHH Mortg. Corp.](#), No. 0:21-cv-62318 (S.D. Fla. Feb. 9, 2022)
- **FDCPA & FCCPA / Class Certification:** Named representative was not a member of the proposed class of individuals who received a dunning letter and also paid the debt referenced in the collection letter; named representative received the dunning letter but did not pay the debt referenced therein and therefore was not a part of the proposed class - [Gartrell v. J.J. Marshall & Assocs., Inc.](#), No. 3:19-cv-00442 (M.D. Fla. Feb. 8, 2022) (denying class certification)

- **FCCPA / Section 559.72(7) / COVID-19:** FCCPA's prohibition against harassing debt collection communications was not violated where a property manager emailed and called tenant about past due rent during the height of COVID-19 - [Lawrence v. FPA Villa Del Lago, LLC](#), No. 8:20-cv-01517 (M.D. Fla. Feb. 4, 2022)

## Title Insurance Update

- **Bad Faith:** Insured's allegations that title insurer did not clear IRS lien from insured's property until more than 100 days after insured's first request were sufficient to state a plausible bad faith claim against title insurer - [May v. Old Republic Nat'l Title Ins. Co.](#), No. 4:21-cv-00093 (M.D. Ga. Feb. 9, 2022) (denying title insurer's motion to dismiss)
- **Declaratory Relief / Subject Matter Jurisdiction / Standing:** Title insurer lacked standing to pursue declaratory relief claim against insured relating to scope of coverage under title insurance policies because 2018 letter from insured to title insurer did not constitute a claim for coverage such that a substantial, ongoing controversy existed between the parties - [Fidelity Nat'l Title Ins. Co. v. MidAtlantic Farm Credit, ACA](#), No. 8:21-cv-01302 (D. Md. Feb. 8, 2022) (granting motion to dismiss)
- **Negligence / Closing Agent's Duty:** Closing agent's fiduciary duty to record the mortgage was to the mortgagee, not the title insurer, and title insurer's negligence or breach of fiduciary duty claim against agent was barred by the economic loss doctrine - [WFG Nat'l Title Ins. Co. v. Paradise Settlement Servs. LLC](#), No. 20 CV H 02 0078 (Ohio Com. Pl. Dec. 14, 2021) (adopting the magistrate's decision and granting judgment in favor of closing agent as to title insurer's negligence claim, to the extent the title insurance agency asserted one in its own right)

## Related Practices

[Real Property Litigation](#)

[Consumer Finance](#)

[Title Insurance](#)

©2024 Carlton Fields, P.A. Carlton Fields practices law in California through Carlton Fields, LLP. Carlton Fields publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.

