

# Real Property, Financial Services, & Title Insurance Update: Week Ending June 12, 2020

June 12, 2020

## Real Property Update

- **Foreclosure / Rule 1.491:** Recommendation of immediate default entered by general magistrate violated the notice requirements of Rule 1.500, and was objectionable, but borrower waived the right to appeal the order approving the general magistrate's recommendation for failing to timely file exceptions – [Garrison v. PHH Mortg. Corp.](#), No. 1D18-1594 (Fla. 1st DCA June 11, 2020) (affirmed)

## Financial Services Update

- **FDCPA / 1692g & 16892e / Notifications:** Sending a second 30-day notice to dispute a debt is not a violation under the FDCPA – [Mathis v. Allied Interstate LLC](#), No. 8:20-cv-00591 (M.D. Fla. June 9, 2020) (dismissing complaint with prejudice)

## Title Insurance Update

- **Encumbrance & Unmarketability:** Ordinance creating third-party interest in right of way on insured property constituted an encumbrance within the meaning of the policy and rendered title unmarketable – [Jericho State Capital Corp. of Fla. v. Chicago Title Ins. Co.](#), No. 2017-001646 (S.C. Ct. App. June 10, 2020) (reversing summary judgment in part and affirming in part)
- **Bad Faith:** Title insurer had reasonable, good faith basis for denying insured's claims and was entitled to summary judgment on the issue even if the appellate court eventually found there was coverage under the title insurance policy for the alleged encumbrance – [Jericho State Capital Corp. of Fla. v. Chicago Title Ins. Co.](#), No. 2017-001646 (S.C. Ct. App. June 10, 2020) (reversing summary judgment in part and affirming in part)

- **Covenants Running With the Land:** Absent an express reservation in a deed reserving to seller the right to receive rents from a cellular telephone tower, the right to receive rents runs with the land – [LRC Realty, Inc. v. B.E.B. Props.](#), No. 2020-Ohio-3196 (Ohio June 9, 2020) (opinion reversing judgment and remanding)
- **Escrow Agent:** Denying motion to dismiss count for accounting, false and fraudulent representations, conversion, and punitive damages, but dismissing count for violation of California’s Unfair Competition Law based on alleged misrepresentations in a bidder agreement to which escrow agent was not a party, count for violation of California’s False Advertising Law, and count for fraudulent concealment – [Appel v. Boston Nat’l Title Agency, LLC](#), No. 3:18-cv-00873 (S.D. Cal. June 10, 2020) (order on motion to dismiss)

## Related Practices

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