

Real Property, Financial Services, & Title Insurance Update: Week Ending March 25, 2022

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Real Property Update

- **Purchase & Sale Agreement / Fraud Disclaimer:** Even though parties, in a purchase and sale agreement, stipulated that no fraud had been committed and that neither party had relied on the representations of the other party made before execution of the agreement, that was not enough to foreclose liability for fraud; the parties would have needed to agree that even if a fraud may have been committed, such a claim may not be asserted – [NM Residential, LLC v. Prospect Park Dev, LLC](#), No. 2D20-3012 (Fla. 2d DCA Mar. 25, 2022)
- **Assignment of Benefits / Homestead:** Florida Constitution Article X, Section 4's restrictions on sale, devise, or alienation of homestead property were not to be treated as impediments to assignment of post-loss insurance benefits; because those homestead protections were inapplicable and did not involve a transfer of real property, appellant's purported noncompliance with Florida Statutes sections 689.01 and 689.111 was immaterial – [All Ins. Restoration Servs., Inc. v. Am. Integrity Ins. Co. of Fla.](#), No. 4D21-89 (Fla. 4th DCA Mar. 23, 2022) (reversing trial court's dismissal of complaint)
- **Contract for Sale of Real Property / Specific Performance / Statute of Frauds:** There was no written agreement signed by both parties as required by statute of frauds; record reflected an initial offer signed by buyer and thereafter only unsigned text messages and emails exchanged between buyer's and sellers' agents; sellers did not sign the initial contract and neither party signed the modification of price and closing date – [Walsh v. Abate](#), No. 4D21-1463 (Fla. 4th DCA Mar. 23, 2022) (affirming dismissal)

Financial Services Update

- **FCRA / Disclosure:** Provision of FCRA requiring disclosure of “all information in the consumer’s file” upon consumer’s request did not require disclosure of all the information in credit reporting agency’s internal-only administrative reports; credit reporting agency’s failure to disclose to consumers “soft inquiries” from third parties did not violate FCRA; credit reporting agency’s failure to disclose behavioral data about consumers maintained in agency’s database did not violate FCRA; credit reporting agency’s alleged failure to disclose dates on which consumers’ employment dates were reported to agency did not violate FCRA – [Tailford v. Experian Info. Sols., Inc.](#), No. 20-56344 (9th Cir. Mar. 1, 2022) (affirming dismissal)
- **FDCPA, TILA & RESPA / Res Judicata:** Plaintiff’s claims for violations of the FDCPA, TILA, and RESPA all arose from the same factual grouping that supported her defenses in her state foreclosure case and consisted of identical claims or claims that are based on the same facts and, thus, were barred by res judicata – [Borrani v. Nationstar Mortg. LLC](#), No. 7:20-cv-01444 (S.D.N.Y. Mar. 21, 2022)
- **FDCPA / Standing:** Plaintiff failed to demonstrate that he suffered any concrete harm because he has not alleged, let alone demonstrated, that he suffered any monetary or reputational harm; instead, plaintiff claimed only that the payment letter at issue caused him confusion and concern, which were insufficient to establish a concrete injury sufficient to confer Article III standing – [Schmelczner v. Penn Credit Corp.](#), No. 7:20-cv-02380 (S.D.N.Y. Mar. 23, 2022) (granting defendant’s summary judgment motion)

Title Insurance Update

- No cases of interest to report.

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