

Real Property, Financial Services, & Title Insurance Update: Week Ending November 19, 2021

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Real Property Update

- **Foreclosure / Reverse Mortgage:** Surviving spouse who did not sign the note did not qualify as a “borrower” by signing the mortgage and related documents – [OneWest Bank, N.A. v. Leek-Tannenbaum](#), No. 3D18-244 (Fla. 3d DCA Nov. 17, 2021) (reversed with directions to enter judgment of foreclosure)

Financial Services Update

- **TCPA / Class Action Settlement:** Court rejected proposed class action settlement, which would award \$25 in damages for each valid claim, because it was on the low end of comparable TCPA settlements and did not distinguish between class members whose cell phones were called once and those who were called multiple times, proposed class representative award of \$15,000 is excessive – [Estate of O’Shea v. Am. Solar Sol., Inc.](#), No. 3:14-cv-00894 (S.D. Cal. Oct. 25, 2021) (denying without prejudice joint motion for preliminary approval of settlement)
- **TCPA / Class Action Settlement / Class Rep Award:** Proposed class representative award of \$15,000 is excessive – [Estate of O’Shea v. Am. Solar Sol., Inc.](#), No. 3:14-cv-00894 (S.D. Cal. Oct. 25, 2021) (denying without prejudice joint motion for preliminary approval of settlement)
- **TCPA / Class Certification:** Class certification denied where plaintiff failed to identify a method by which the class could be ascertained, and determining whether an individual was within the proposed class would necessarily entail an individualized analysis to determine whether they had an established business relationship – [Sapan v. Yelp, Inc.](#), No. 3:17-cv-03240 (N.D. Cal. Nov. 15, 2021) (denying motion to certify class)

- **FCRA / Notification:** Consumer failed to state claim against furnisher for failing to remove notation that her account was in dispute where consumer failed to plead that she directly notified any entity that she no longer disputed the account – [Hunter v. Equifax Info. Sols., LLC](#), No. 1:20-cv-00639 (W.D.N.Y. Nov. 12, 2021) (dismissing complaint with leave to amend)
- **FCRA / Standing:** Consumers who challenged credit reporting agency’s procedures, arguing they led to potential inaccuracies, failed to establish standing because they did not suffer concrete harm; potential future harm is not sufficient for Article III standing – [Maddox v. Bank of N.Y. Mellon Tr. Co., N.A.](#), No. 19-1774 (2d Cir. Nov. 17, 2021) (vacating district court order denying defendant’s motion for judgment on the pleadings and remanding for dismissal)

Title Insurance Update

- **Enforcement of Settlement Agreement:** Covenant not to sue in release and settlement agreement barred developer and investors’ claims against title insurer – [ALR Oglethorpe, LLC v. Fidelity Nat’l Title Ins. Co.](#), No. A21A0989 (Ga. Ct. App. Sept. 27, 2021) (affirming summary judgment in favor of title insurer)
- **Contribution / Indemnification:** Title insurer was not joint tortfeasor with law firm, and thus investors had no right to seek contribution or indemnification from title insurer – [ALR Oglethorpe, LLC v. Fidelity Nat’l Title Ins. Co.](#), No. A21A0989 (Ga. Ct. App. Sept. 27, 2021) (affirming summary judgment in favor of title insurer)
- **Class Action / Unfair Competition:** Individual lacked standing, as either an individual or a class representative, to bring an unfair competition law claim seeking restitution and injunctive relief against title insurer because individual failed to show that he suffered an injury in fact and lost money or property as a result of unfair competition – [Villanueva v. Fidelity Nat’l Title Co.](#), No. H041870, H042504 (Cal. Ct. App. Nov. 12, 2021) (reversing trial court’s decision and entering an order directing dismissal in favor of title insurer)
- **Removal / Remand:** Defendant’s untimely removal to the wrong venue required that the action be remanded to state court instead of transferred to the appropriate federal district court – [Fidelity Nat’l Title Ins. Co. v. CRH Americas, Inc.](#), No. 3:21-cv-00688 (M.D. Pa. Nov. 17, 2021) (overruling defendant’s objections to the magistrate judge’s report and recommendation and granting the title insurer’s motion to remand)
- **Sales & Use Tax:** Sales and use tax as applied to title insurer’s lease of business equipment did not violate Article XIII, § 28(f) of California Constitution – [First Am. Title Ins. Co. v. Cal. Dep’t of Tax & Fee Admin.](#), No. D077970 (Cal. Ct. App. Nov. 12, 2021) (reversing trial court’s judgment and vacating writ of mandate)

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