

Real Property, Financial Services, & Title Insurance Update: Week Ending November 23, 2018

November 23, 2018

Real Property Update

- **Reverse Mortgage / Statute of Limitations:** as a matter of first impression, statute of limitations for enforcing reverse mortgage begins on date the note matures, notwithstanding earlier-death of borrower - [Hayes v. Reverse Mortgage Solutions, Inc.](#), No. 3D17-1603 (Fla. 3d DCA Nov. 21, 2018) (affirmed)
- **Judicial Default / Insufficient Notice:** entry of judicial default within hours of filing and serving motion for default was "insufficient notice" under Fla. R. Civ. P. 1.500(b) for failure to provide defendant a meaningful opportunity to be heard - [Falcon v. Wilmington Sav. Fund Soc'y, FSB](#), No. 3D17-1799 (Fla. 3d DCA Nov. 21, 2018)
- **Bert Harris Act:** only legal title holder of property directly impacted by government action can sustain a claim under Bert Harris Act, section 70.001(3)(f), Fla. Stat., requiring dismissal of claims asserted by owners of adjacent properties - [Vale v. Palm Beach Cnty.](#), Nos. 4D18-1037, 4D18-1039, 4D18-1073, & 4D18-1592 (Fla. 4th DCA Nov. 21, 2018) (affirmed)
- **Foreclosure / Assignment of Rents:** court may require sequestration of rents under section 697.07(4), Fla. Stat. without considering defenses or counterclaims asserted by mortgagor - [Bluewater, Inc. v. Center Street Lending Fund IV SPE, LLC](#), Case No. 4D18-3152 (Fla. 4th DCA Nov. 21, 2018) (affirmed)

Financial Services Update

- **FDCPA / §1692e and §1692g Putative Class Action:** collections letter was not plausibly misleading under FDCPA §1692e for saying the collector "will not sue," as opposed to "cannot sue," because it also clarified that "the law limits how long you can be sued on a debt," consistent with Sixth Circuit case law on matter- [Jones v. Synergetic Comm'n, Inc.](#), No. 18-cv-1860 (S.D. Cal. Nov. 20, 2018) (dismissing without prejudice class action claims)
- **TCPA / Fax / Incidental Advertisement:** one-line identifier statement in fax cover sheet was an "incidental advertisement" that did not convert entire communication into an advertisement given amount of space devoted to advertising versus space used for information - [Supply Pro Sorbents, LLC v. RingCentral, Inc.](#), No. 17-16528 (9th Cir. Nov. 20, 2018) (affirming dismissal of TCPA claim)
- **FCRA / Arbitration:** FCRA claim was within scope of disputes delegated to arbitrator and agreement was not unconscionable - [Peterson v. Lyft, Inc.](#), No. 16-cv-07343 (N.D. Cal. Nov. 19, 2018) (dismissing action alleging Lyft violated the FCRA and compelling arbitration)

Title Insurance Update

- **Encumbrances / Zoning:** zoning regulations are not a defect in title or lien or encumbrance on title to property, do not render title unmarketable, and thus are not covered under a title policy - [JBGR LLC v. Chicago Title Ins. Co.](#), No. 35140-11 (N.Y. Sup. Ct. Nov. 13, 2018) (order granting summary judgment)
- **Prompt Notice:** insureds' notification to title insurer five and seven years after instigation of two lawsuits and after insured incurred private counsel attorney's fees does not constitute timely notice under the policy - [Lurie v. Commonwealth Land Title Ins. Co.](#), No. ED 106156 (Mo. Ct. App., Aug. 28, 2018) (affirming summary judgment)

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