

# Real Property, Financial Services, & Title Insurance Update: Weeks Ending September 22 & 29, 2017

October 09, 2017

## REAL PROPERTY UPDATE

- **Constructive Notice:** a memorandum of agreement that is recorded in the official records of the county in which the property is located and refers to an unrecorded agreement entered into by the then-owner of the property gives subsequent purchasers constructive notice of the agreement, binding them to its provisions - [AHF-Bay Fund, LLC v. City of Largo](#), Case No. 2D14-408 (Fla. 2d DCA Sept. 27, 2017) (affirmed after remand from Florida Supreme Court)
- **Foreclosure / Standing:** bank did not present sufficient evidence through witness at trial to admit pooling and service agreement, which it was attempting to rely on to prove possession of the note at the time the suit was filed - [Friedle v. The Bank of New York Mellon](#), No. 4D15-1750 (Fla. 4th DCA Sept. 27, 2017) (reversing and remanding for entry of involuntary dismissal)
- **Foreclosure / Statute of Limitations:** trial court erred in dismissing foreclosure proceeding on grounds of res judicata and statute of limitations, where a subsequent complaint was filed alleging a continuing default in monthly payments - [HSBC Bank USA, Nat'l Ass'n, as Trustee v. The Estate of Chloe Ann Petercen](#), No. 4D16-3283 (Fla. 4th DCA Sept. 27, 2017) (reversing and remanding)
- **Foreclosure:** foreclosing bank's 1.540(b) motion for relief from judgment was properly denied where foreclosing bank argued that defendant was denied due process rights because defendant was not served with order to show cause pursuant to section 702.10(1), but where counsel for defendant informed the trial court that defendant consented to and did not oppose the entry of a final judgment of foreclosure - [Nationstar Mortgage, LLC v. Diaz, et al.](#), Case No. 3D16-1927 (Fla. 3d DCA Sept. 20, 2017) (Affirmed).

- **Foreclosure:** homeowner defendants were entitled to involuntary dismissal of foreclosure action where certain HUD regulations were incorporated into the terms of the loan as conditions precedent to foreclosure, and where foreclosing bank failed to comply with those HUD regulations - [McIntosh v. Wells Fargo Bank, N.A.](#), Case No. 5D16-2189 (Fla. 5th DCA Sept. 18, 2017) (reversed and remanded).

## FINANCIAL SERVICES UPDATE

- **RESPA:** consent order directing \$1.25 million in restitution and fines where title agency referred business to an affiliated title insurance underwriter and sometimes kept excessive amounts of premium, without making affiliated business arrangement disclosure to consumers, in violation of RESPA - In re [Meridian Title Corp.](#), File No. 2017-CFPB-0019 (Sept. 27, 2017).
- **RESPA:** affirming summary judgment for loan servicer because borrower's postage to send request for information and the cost of her attorney's review of the response did not constitute "actual damages" under RESPA - [Baez v. Specialized Loan Servicing, LLC](#), Case No. 16-18292 (11<sup>th</sup> Cir. Sept. 22, 2017).
- **TCPA:** certifying class of car owners who advertised cars for sale on Craigslist, then had their cell phone number "scraped" and texted by an auto-dialer system in a scheme to get them to come to one of the defendant's car lots, in alleged violation of the TCPA - [Mohamed v. American Motor Co., LLC](#), Case No. 15-23352-Civ-Cooke/Torres (S.D. Fla., July 12, 2017).
- **FDCPA:** reversing, in part, a dismissal and holding that a voicemail was an "initial communication" within the meaning of the FDCPA, but that if debt collection company was identified in the voicemail, that was "meaningful disclosure" and it was not required to identify the individual caller - [Hart v. Credit Control, LLC](#), Case No. 16-17126 (11<sup>th</sup> Cir., Sept. 22, 2017).
- **FDCPA:** denying dismissal of putative class action under FDCPA alleging that debt collectors seeking to collect time-barred debts had failed to disclose that the partial payments they asked for in their letters might serve to revive the debt - [White v. First Step Group LLC](#), Case No. 2:16-cv-02439 (E.D. Cal., Sept. 19, 2017).
- **FCRA:** affirming dismissal of FCRA complaint for insufficient allegations of intentional violation where it was not objectively unreasonable for credit reporting agency to list on plaintiff's credit report her parents' credit card for which she was an authorized user - [Pedro v. Equifax, Inc.](#), Case No. 16-13404 (11<sup>th</sup> Cir., Aug. 24, 2017)

## TITLE INSURANCE UPDATE

- **Title Policy Late Notice Defense:** denying cross-motions for summary judgment and holding that the extent of prejudice caused by lender's late notice of policy claim to title insurer presented a fact issue - [Emigrant Bank v. Commonwealth Land Title Ins. Co.](#), No. 15-CV-7593 (KMK) (S.D.N.Y., Sept. 26, 2017).

## Related Practices

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