

Real Property, Financial Services, & Title Insurance Update: Week Ending November 9, 2018

November 10, 2018

Real Property Update

- **Foreclosure / Attorneys' Fees:** where borrower prevailed on argument that dismissal of foreclosure action was required as bank was not entitled to enforce a mortgage contract containing a fee provision, but bank was successful in enforcing deed agreement against borrower, borrower was not a "prevailing party" and was precluded from recovering fees based on provision in mortgage - [Wells Fargo Bank, N.A. v. Moccia](#), No. 4D18-0479 (Fla. 4th DCA Nov. 7, 2018) (reversed and remanded)

Financial Services Update

- **FDCPA & TILA / Mortgage Statements:** monthly mortgage statements in compliance with TILA were not debt collection - [Shaffer v. Servis One, Inc.](#), 2018 WL 58785959, at *4 (M.D. Fla. Nov. 5, 2018) (granting in part dismissal motion)
- **TCPA / Claims Survive Recipient's Death:** a private claim under the TCPA is remedial in nature, rather than penal, and survives the call recipient's death - [Sharp v. Ally Fin'l, Inc.](#), 328 F. Supp. 3d 81, 91 (W.D.N.Y. Sep. 10, 2018)
- **TCPA / Standing:** finding plaintiff had standing to pursue TCPA claims, and noting that all courts of appeals that have examined standing challenges under TCPA have found that "the injuries caused by automated telephone calls—including cost, waste of time, annoyance, and invasion of privacy—are concrete injuries sufficient to confer Article III standing" - [Rotberg v. Jos. A. Bank Clothiers, Inc.](#), 2018 WL 5787480, at *4 (S.D.N.Y. Nov. 5, 2018)

Title Insurance Update

- **Equitable Subrogation:** in bankruptcy proceeding to determine mortgage priority, debtor could not make equitable subrogation argument that must, instead, be made by new lender that paid off old HELOC - [In re McGough](#), No. 17-13809-13 (Bankr. W.D. Wisc. Oct. 26, 2018)
- **Title Search:** brokers who allegedly failed to tell buyers that sellers did not own dock lacked standing to sue buyer's lawyer for indemnification or breach of fiduciary duty for failure to explain title search to buyer - [Carroll v. Lyman](#), No. CV 17 6029852 (Conn. Sup. Ct. Oct. 19, 2018)
- **Title Agencies:** non-compete contracts of title agency bought in a stock purchase by title insurer validly passed to title insurer, who obtained significant jury award against employees when they started a competing title agency - [First Am. Title Ins. Co. v. Northwest Title Ins. Agency](#), No. 17-4086, 906 F.3d 884 (10th Cir. Oct. 9, 2018)

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