

Real Property, Financial Services, & Title Insurance Update: Week Ending April 26, 2019

April 27, 2019

Real Property Update

- **Foreclosure / Reverse Mortgage / Condition Precedent:** bank failed to establish that the subject property was not the principal residence of surviving co-borrower under its reverse mortgage, a condition precedent to its right to foreclose - [OneWest Bank, FSB v. Palermo](#), No. 3D14-3114 (Fla. 3d DCA Apr. 24, 2019) (affirming judgment)
- **Real Property / Sales Contract:** purchaser's email substantially complied with written notice of cancellation requirement in real property sales agreement where seller had actual notice; agreement also provided for automatic termination - [Magacenter US LLC v. Goodman Doral 88th Court LLC](#), No. 3D18-519 (reversing summary judgment)
- **Foreclosure / Standing:** bank did not lack standing to foreclose where allonge predated note by one day - [The Bank of N.Y. Mellon v. Fla. Kalanit 770 LLC](#), No. 4D18-3295 (Fla. 4th DCA Apr. 24 2019) (reversing dismissal)

Financial Services Update

- **TCPA / Federal Debt-Collection Exemption Unconstitutional:** FCC's regulations implementing an exemption for automated calls to cell phones for debts owed to or guaranteed by the federal government is a content-based restriction that violates the First Amendment; offending portion is severable and does not invalidate the remainder of the TCPA - [Am. Ass'n of Political Consultants, Inc. v. FCC](#), No. 18-1588 (4th Cir. Apr. 24, 2019)

- **FCRA / Furnishing Inaccurate Information:** to bring suit against a furnisher for providing inaccurate information to CRA under 15 USC § 1681s-2(b), plaintiff must show a factual inaccuracy rather than the existence of disputed legal questions; whether a consumer is obligated to make payments on a mortgage after the filing of a foreclosure action is a disputed legal question - [Hunt v. JPMorgan Chase Bank, Nat'l Ass'n](#), No. 18-11306 (11th Cir. Apr. 25, 2019)
- **FDCPA / Status as Creditor:** party's status as creditor or debt collector for purposes of determining whether the FDCPA applies to the claims brought against it depends on its relationship to the debt, not who it pursues for collection of the debt - [Teetrick v. Bank of Am., N.A.](#), No. 6:18-cv-2061 (M.D. Fla. Apr. 24, 2019)
- **RESPA / Tolling of Statute of Limitations:** RESPA's one-year statute of limitations period is subject to tolling based on fraudulent concealment - [Edmonson v. Eagle Nat'l Bank](#), No. 18-1216 (4th Cir. Apr. 26, 2019)

Title Insurance Update

- **Title Agent Duties:** title agent had duty either to refuse to close transaction or to alert parties that title to the land legally described in the deed was not in seller and did not match street address in parties' contract - [Tyler Title Co., LLC v. Cowley](#), No. 12-18-00043-CV (Tex. App. April 10, 2019) (affirming judgment after trial).

Related Practices

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