

Real Property, Financial Services, & Title Insurance Update: Week Ending June 21, 2019

June 22, 2019

Real Property Update

- **Mortgagee Liability:** because section 701.04(1)(a), Florida Statutes, requires that the holder of a mortgage deliver to the mortgagor a written estoppel letter setting forth the unpaid balance of the mortgage loans and "other charges properly due under and secured by the mortgage[.]" mortgagor could sustain cause of action for damages - [Laptopplaza, Inc. v. Wells Fargo Bank, NA](#), Case No. 3D8-131 (FLA. 3d DCA June 19, 2019) (dismissal reversed, and remanded with instruction to amend complaint)

Financial Services Update

- **TCPA / Unsolicited Fax / Legislative v. Interpretive Rule:** a district court dismissed a TCPA action brought by the recipient of an unsolicited fax against a publisher who sent the fax. The Fourth Circuit Court of Appeals vacated the district court's judgment, holding that the district court should have followed a Federal Communication Commission's order opining that the TCPA prohibits unsolicited faxes promoting goods and services, even at no cost. The Supreme Court vacated the appellate ruling and remanded for analysis of whether a Federal Communication Commission's order is a "legislative rule" or "interpretive rule." If the order is deemed an "interpretive rule" it may not be binding on the district court - [PDR Network, LLC v. Carlton & Harris Chiropractic, Inc.](#), No. 17-1705 (June 20, 2019) (vacating and remanding)
- **FDUTPA / Attorneys' Fees Award:** plaintiff not entitled to attorneys' fees incurred as part of defending an initial fee award under FDUTPA, because the benefit of such an award would inure only to plaintiff's attorneys as plaintiff had no obligation to pay for this work - [Alhassid v. Nation Star Mortg, LLC](#), No. 18-11985 (11th Cir. 2019) (affirming denial of award of attorney's fees)

Title Insurance Update

- **Negligent Procurement:** Delaware's time of discovery rule applies to allegations of negligent procurement of title insurance and precludes title insurance agent's motion to dismiss based on the application of the statute of limitations - [Fansler v. North Am. Title Ins. Co.](#), No. N17-09-015 (Del. Sup. Ct. June 19, 2019) (memorandum opinion denying defendant's motion to dismiss)

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