

Real Property, Financial Services, & Title Insurance Update: Week Ending October 18, 2019

October 30, 2019

Real Property Update

- **Foreclosure / Statute of Limitations:** default notice pursuant to paragraph 22 of subject mortgage may include amounts accrued outside five-year statute of limitations – [U.S. Bank, Nat'l Ass'n v. Sturm](#), No. 2D18-757 (Fla. 2d DCA Oct. 16, 2019) (reversed and remanded)
- **Class Action:** an order denying certification of a class action counterclaim in a foreclosure case, which fails to include findings upon which the ruling was based, is contrary to Florida Rule of Civil Procedure 1.220(d)(1) and is immediately appealable – [Cabrera v. U.S. Bank Nat'l Ass'n](#), No. 4D18-3537 (Fla. 4th DCA Oct. 16, 2019) (reversed)

Financial Services Update

- **FCCPA:** Florida's workers' compensation law does not preclude trial court's jurisdiction over a consumer's claims against her workers' compensation medical providers for violation of the FCCPA – [Davis v. Sheridan Healthcare, Inc.](#), Nos. 2D17-829, 2D17-1790 (Fla. 2d DCA Oct. 16, 2019)
- **FCRA / Standing:** plaintiff lacks Article III standing to pursue Fair Credit Reporting Act (FCRA) claim where plaintiff alleges only a technical violation of the FCRA without any accompanying concrete harm associated with screening company performing background check on plaintiff without obtaining certification from employer that employee authorized such background check pursuant to the FCRA – [Fifer v. ADP Screening & Selection Servs., Inc.](#), No. 5:19-cv-03174 (N.D. Cal. Oct. 15, 2019) (granting motion to remand)

- **FDCPA:** court denied, in part, motion to dismiss student loan debtors' claims alleging that student loan trusts, student loan servicer, and law firm retained by the trusts deployed fraudulent scheme to obtain default judgments in state court against debtors in order to recover payment of student loans described as "unprovable debts" – [Michelo v. Nat'l Collegiate Student Loan Tr. 2007-2](#), No. 1:18-cv-01781 (S.D.N.Y. Oct. 11, 2019)

Title Insurance Update

- **Title Defects:** concluding that recorded easements and use restrictions that were omitted from chain of title report and were not listed as exclusion in title policy constituted title defects, which triggered covered loss under title policy – [Old Republic Nat'l Title Ins. Co. v. RM Kids, LLC](#), No. A19A0971 (Ga. Ct. App. Oct. 17, 2019) (affirming denial of motion for directed verdict)

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