

Real Property, Financial Services, & Title Insurance Update: Week Ending October 4, 2019

October 05, 2019

Real Property Update

- **Foreclosure / Bankruptcy / Surrender:** borrower cannot challenge judgment of foreclosure entered upon judicial notice of his statement of intention to surrender the property and order of discharge entered in his bankruptcy case - [Lewis v. Innova Inv. Grp., LLC](#), No. 2D18-2116 (Fla. 2d DCA Oct. 2, 2019) (affirmed; appeal dismissed)
- **Foreclosure:** "x" that appeared over blank indorsement of promissory note did not void indorsement or deprive holder of original note from foreclosing mortgage securing same - [Roif v. JP Morgan Chase Bank](#), No. 3D18-1839 (Fla. 3d DCA Oct. 2, 2019) (affirmed)

Financial Services Update

- **RESPA / Rooker-Feldman Doctrine:** RESPA claim for failure to properly respond to plaintiffs' notices of error was barred by the *Rooker-Feldman* doctrine because it was essentially a challenge to the prior state court foreclosure judgment where the notices of error contested both the prior foreclosure and indebtedness owed, and where plaintiffs' alleged damages consisted of their costs in defending against the foreclosure action - [McDonald v. Seterus, Inc.](#), No. 19-10182 (11th Cir. Oct. 2, 2019) (affirming dismissal with prejudice)
- **FDCPA / 1692f:** nonjudicial foreclosure activity is an attempt to "enforce a security interest" under section 1692f of the FDCPA and, therefore, subjects debt collectors to liability under section 1692f if they engage in such activity and violate the Act in the course of doing so - [Shelton v. Ocwen Loan Servicing, LLC](#), No. 3:18-cv-02467 (S.D. Cal. Sept. 30, 2019) (granting in part and denying in part motion to dismiss)

- **FDCPA:** knowingly filing a time-barred foreclosure action constitutes a violation of the FDCPA - [Gold v. Shapiro, Dicaro & Barak, LLC](#), No. 1:18-cv-06787 (E.D.N.Y. Sept. 30, 2019) (granting in part and denying in part motion to dismiss)
- **FDCPA:** allegation that servicer's default letters falsely state that unless borrowers make full payment by a certain date, servicer will accelerate their loans and commence foreclosure adequately states a claim under the FDCPA where servicer allegedly does not accelerate loans if borrowers bring their loans less than 45 days delinquent - [Heinitz v. Seterus, Inc.](#), No. 1:18-cv-01076 (N.D.N.Y. Sept. 30, 2019) (granting in part and denying in part motion to dismiss)
- **FDCPA / 1692g:** debt collector's disclosure in its collection letter of the balance owed and its advance warning to the borrower that the balance owed may continue to increase due to interest and fees is sufficient for purposes of the FDCPA because the Act does not require disclosure of the actual rate at which interest will accrue or the actual amount of any fees that may be assessed if payment is not timely received - [Allen v. Advanced Call Center Techs., LLC](#), No. 2:18-cv-02873 (E.D.N.Y. Sept. 30, 2019) (granting motion to dismiss)

Title Insurance Update

- **Policy Liability:** a borrower is not insured under lender's policy, does not have standing to pursue breach of contract and bad faith claims under a lender's policy, and cannot have claims arising out of title to the property and foreclosure action - [Dillon v. Bayview Loan Servicing](#), No. 2:18-cv-01582 (D. Nev. Sept. 30, 2019) (order granting motions to dismiss)
- **Exclusions:** language in policy exclusion identifying mortgage by reference to original amount of loan does not limit extent of mortgage exclusion and owner's loss arising from foreclosure of mortgage based on other debt pursuant to cross-collateral provision in mortgage is nevertheless excluded from coverage - [Fo Ge Invs. LLC v. First Am. Title Ins. Co.](#), No. A-18-693, 27 Neb. App. 671 (Neb. Ct. App. Oct. 1, 2019) (opinion affirming order granting summary judgment)
- **Bad Faith:** insured owner cannot show an absence of a reasonable basis for title insurer's denial of coverage required to establish a claim for bad faith where the denial is based on an express exclusion - [Fo Ge Invs. LLC v. First Am. Title Ins. Co.](#), No. A-18-693, 27 Neb. App. 671 (Neb. Ct. App. Oct. 1, 2019) (opinion affirming order granting summary judgment)
- **Negligence:** while title insurance companies and their agents are required to exercise the degree of skill and knowledge normally possessed by members of the profession as to preliminary title information transmitted to their customers, this duty is not a guaranty of title, merely a duty of reasonable care - [Fo Ge Invs. LLC v. First Am. Title Ins. Co.](#), No. A-18-693, 27 Neb. App. 671 (Neb. Ct. App. Oct. 1, 2019) (opinion affirming order granting summary judgment)

- **Fraud:** title insurer substituted in for insured who showed fraud by clear and convincing evidence that insured's signatures on purchase and sale agreement and power of attorney were forged is entitled to summary judgment - [First Am. Title Ins. Co. v. Chavannes](#), No. 07053 (N.Y. App. Div. Oct. 2, 2019) (opinion affirming order granting summary judgment)

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