

# Real Property, Financial Services, & Title Insurance Update: Week Ending September 13, 2019

September 13, 2019

## Real Property Update

- **Lost Note / Standing:** differences in initial plaintiff's name in initial complaint and chain of assignments attached to amended complaint cast doubt on plaintiff's standing to enforce lost note and precluded summary judgment - [ARR Invs., Inc. v. Bautista REO US, LLC](#), No. 5D18-1663 (Fla. 5th DCA Sept. 13, 2019) (reversed and remanded)
- **Ad Valorem Taxes / Homestead / Portability:** homeowners could not claim homestead tax portability benefit because they did not reside in their new homestead on January 1st of the second tax year from the sale of their homestead - [Baldwin v. Henriquez](#), No. 2D18-2658 (Fla. 2nd DCA Sept. 13, 2019) (affirmed)
- **Ad Valorem Taxes / Homestead:** Florida homeowners were not entitled to Homestead tax benefits, and were liable for years of back taxes, for receiving tax benefits on claim of permanent residency in Ohio. Homeowners' lack of knowledge or intent, and third-party error, could not overcome clear statutory language - [Fitts v. Furst](#), No. 2D18-538 (Fla. 2d DCA Sept. 13, 2019) (affirmed)
- **Ad Valorem Taxes / Homestead:** Florida homeowner was not entitled to Homestead tax benefits because he received tax benefits on claim of permanent residency in Wisconsin in violation of Florida Statutes, section 196.031(5) - [Brielmaier v. Furst](#), No. 2D18-541 (Fla. 2d DCA Sept. 13, 2019) (affirmed)

## Financial Services Update

- **FCRA:** The Middle District of Florida granted a credit report agency's motion to dismiss a daughter's claims for intentional infliction of emotional distress, negligence, and gross negligence based on the agency's failure to correct her father's credit report. The agency inaccurately reported that her father was deceased and that he had a large mortgage with delinquent payments. Based on the incorrect credit report, the father was unable to obtain a loan to remodel his home to accommodate his health needs, unable to obtain a loan to cover his wife's funeral expenses, and had a car repossessed. The father passed away and his daughter sued the agency. The court held that the agency's conduct was not "objectively outrageous", and therefore dismissed the daughter's claim for intentional infliction of emotional distress. The court also held that the agency had no duty to the daughter in connection with her father's credit report, reasoning the daughter "cites no authority to support her contention that an incorrect credit report foreseeably creates a threat of harm to a third party, who had not applied for credit, was not denied credit, and whose only interaction with a credit reporting agency was phone calls and letters on behalf of her parents." The court also dismissed the daughter's claims, which she brought on behalf of her deceased father, for punitive damages under the Fair Credit Reporting Act because such a claim is "penal by nature and does not survive the death of a party." - [Malverty v. Equifax Info. Servs., LLC](#), No. 8:17-cv-1617-T-27AAS (M.D. Fla. Sept. 11, 2019)
- **FDUTPA:** The Second District Court of Appeal reversed a trial court's order granting class certification in a lawsuit alleging that the dealership violated the Florida Deceptive and Unfair Trade Practices Act by failing to refund consumers the difference between the estimated and actual amounts charged for title and registration fees. The appellate court held that the consumer failed to allege that the dealership acted in a way that was "unscrupulous, oppressive, unethical, or immoral" because the "mere existence of an overcharge does not establish a violation of FDUTPA." - [Angelo v. Parker](#), No. 1D18-1304 (Fla. 1st DCA 2019).

## Title Insurance Update

- **Reformation:** where there is no ambiguity and exception to title insurance policy was intended to be included but was mistakenly omitted, title insurer entitled to seek reformation of policy to incorporate exclusion - [Bank of New York Mellon v. Christopher Communities at S. Highlands Golf Club Homeowners Ass'n](#), No. 2:17-CV-1033 (D. Nev. Sept. 9, 2019) (order denying summary judgment)
- **Duty to Defend:** where survey would have disclosed that easement had been abandoned and title insurance policy contained exception for matters disclosed on a survey, title insurer did not have a duty to defend insured in counterclaim seeking a declaration that insured's seller had abandoned the easement - [Haley v. Hume](#), No. 77769-6-I (Wash. App. Ct. Sept. 9, 2019) (opinion affirming summary judgment)

# Related Practices

[Real Property Litigation](#)

[Consumer Finance](#)

[Title Insurance](#)

©2024 Carlton Fields, P.A. Carlton Fields practices law in California through Carlton Fields, LLP. Carlton Fields publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.