

Real Property, Financial Services, & Title Insurance Update: Week Ending August 21, 2020

August 21, 2020

Real Property Update

- **Foreclosure Sale / Challenge:** borrower failed to meet his burden of establishing that gross inadequacy of foreclosure bid price resulted from "mistake, fraud or other irregularity" in the sale - [Venezia v. Wells Fargo Bank, N.A.](#), No. 3D19-1869 (Fla. 3d DCA Aug. 19, 2020) (affirming denial of motion to vacate foreclosure sale)
- **Foreclosure / Extinguishing Interests:** where it was undisputed that subsequent mortgagee's predecessor in interest was an alter ego of original owner and mortgagor, rebuttable presumption existed that original mortgagor had unlawfully intended to defeat subordinate interests - [Koyfman v. 1572 Pledger LLC](#), No. 3D19-1521 (Fla. 3d DCA Aug. 19, 2020) (reversing foreclosure judgment and denial of counterclaim to quiet title)

Financial Services Update

- **FDCPA & FCCPA / Sovereign Immunity:** claims against United States barred by sovereign immunity because Congress has not waived sovereign immunity under the FDCPA or Florida statutory law - [Sole v. Devos](#), No. 8:19-cv-3114-T-60JSS (M.D. Fla. Aug. 20, 2020)
- **FCRA:** plaintiff did not submit sufficient evidence to establish that defendant lacked reasonable procedures to avoid violation of FCRA, because the violation plaintiff has established arose from defendant's incorrect interpretation of the FCRA, rather than any failure to maintain reasonable procedures for reporting information - [Moran v. The Screening Pros, LLC](#), No. 2:12-cv-05808-SVW-AGR (C.D. Cal. July 30, 2020) (granting summary judgment in defendant's favor)

- **TILA:** plaintiff provided no authority for the proposition that only the organization servicing a loan may act as a lender's agent in providing TILA notice of a change in ownership - [Gordon v. U.S. Bank Nat'l Ass'n](#), No. 18-10075-DMG (PLAx) (C.D. Cal. July 21, 2020) (granting summary judgment in defendants' favor)

Title Insurance Update

- **Closing Agent Liability / Negligence:** borrower's negligence claim against closing agent for failure to issue a title insurance policy without exclusions for mechanic's liens and for failure to follow closing instructions failed because the mechanic's liens were post policy and would have been excluded even if such a policy had been issued and because the borrower had no written closing instructions so as to come within the scope of the closing protection letter - [Johnson v. U.S. Title Agency, Inc.](#), No. 108547 (Ohio Ct. App. Aug. 13, 2020) (affirming trial court's directed verdict on borrower's negligence claim)
- **Duty to Defend / Land Not Covered:** title insurer has no duty to defend insured against adjoining landowner's to own or have an easement over a strip of property lessed out of insured's legal description in its deed and title insurance policy - [Rabinowitz v. Chicago Title Ins. Co.](#), No. 52898-30II (Wash. Ct. App. Aug. 18, 2020) (affirming grant of summary judgment in favor of title insurer)

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