

Real Property, Financial Services, & Title Insurance Update: Week Ending May 8, 2020

May 08, 2020

Real Property Update

- **Foreclosure:** Trial court erred in granting summary final judgment of foreclosure as lender failed to properly prove amounts due by competent substantial evidence - [CDC Capital Invs., LLC v. Bayview Loan Servicing, LLC](#), No. 1D18-4422 (Fla. 1st DCA May 8, 2020) (reversing and remanding)

Financial Services Update

- **FCRA / Standing:** Consumer sufficiently alleged injury to confer standing where defendant requested plaintiff's credit bureau report without a pending loan application or request from plaintiff - [Daniel v. Concord Advice, LLC](#), No. 8:19-cv-02978 (M.D. Fla. May 6, 2020) (denying motion to dismiss)
- **UCL / Jury Trial:** No statutory or state constitutional right to jury trial under California unfair competition law or false advertising law - [Nationwide Biweekly Admin., Inc. v. Superior Court of Alameda Cty.](#), No. S250047 (Cal. Apr. 30, 2020) (reversing and remanding)
- **Student Loans / HEA / Preemption:** Claims that servicer steered borrowers into less favorable repayment options are preempted by the HEA - [People of the State of N.Y. v. Pa. Higher Educ. Assistance Agency](#), No. 1:19-cv-09155 (S.D.N.Y. May 1, 2020) (granting in part and denying in part motion to dismiss)

Title Insurance Update

- **Duty to Defend:** Where title insurance policy "conceivably" covered Native American tribe's treaty right to harvest shellfish from the property and there were no applicable exceptions to coverage, title insurer owed a duty to defend and in failing to do so it breached that duty and acted in bad faith in doing so because the breach was "unreasonable" given the uncertainty in the law - [Robbins v. Mason Cty. Title Ins. Co.](#), No. 96726-1 (Wash. Sup. Ct. May 7, 2020) (affirming court of appeals and remanding for further proceedings)

Related Practices

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