

Real Property, Financial Services, & Title Insurance Update: Week Ending September 18, 2020

September 18, 2020

Real Property Update

- **Foreclosure / Jurisdiction:** section 720.04's exception to the local action rule is applicable where the cross-collateralized mortgages are construed as one instrument and the court has subject matter jurisdiction over the entire action, including the mortgage encumbering property outside of the county - [Brant v. Metropolitan Life Ins. Co.](#), No. 4D20-1207 (Fla. 4th DCA Sept. 16, 2020) (petition denied)

Financial Services Update

- **FCCPA / Processing Fees:** borrower stated a cause of action based on allegation that loan servicer violated FCCPA by charging processing fees to borrower for making payments online or by phone when such fees were not authorized by the mortgage or applicable law - [Alvarez v. LoanCare LLC](#), No. 20-21837 (S.D. Fla. Aug. 28, 2020) (denying dismissal motion)
- **FCCPA / Valid FDUTPA Predicate:** knowingly asserting a non-existent legal right in the course of debt collection is unconscionable, deceptive, and unfair, and, thus, a statute prohibiting this conduct (section 559.72(9)) is a valid FDUTPA predicate - [Alvarez v. LoanCare LLC](#), No. 20-21837 (S.D. Fla. Aug. 8, 2020) (denying dismissal motion)
- **TCPA / Class Action / Incentive Awards:** incentive awards that compensate a class representative for his time and rewards him for bringing a putative class action are prohibited - [Johnson v. NPAS Solutions, LLC](#), No. 18-12344 (11th Cir. Sept. 17, 2020) (reversing and vacating in part, and remanding for further proceedings)
- **TILA / Loan to a Trust:** loan to a trust secured by a primary residence is protected by TILA - [Sundby v. Marquee Funding Group, Inc.](#), No. 3:19-CV-0390-GPC-AHG (S.D. Cal. Sept. 15, 2020)

Title Insurance Update

- **Title Agency Liability / Failure to Properly Disburse Escrow Funds:** lender plausibly alleged claims for breach of contract, unjust enrichment, breach of fiduciary duty, and conversion arising from title agency's failure to use escrowed loan proceeds to pay off all taxes on subject mortgaged property - [7841 Pines Boulevard, LLC v. 114 Church Street Funding, LLC](#), No. 18-cv-07405 (N.D. Ill. Sept. 11, 2020) (denying title agency's motion to dismiss)
- **Title Agency Liability / Attachments to Motion to Dismiss:** exhibits attached to motion to dismiss which were not referenced in complaint or otherwise appropriate for judicial notice could not be considered without converting motion to dismiss to one for summary judgment - [7841 Pines Boulevard, LLC v. 114 Church Street Funding, LLC](#), No. 18-cv-07405 (N.D. Ill. Sept. 11, 2020) (denying title agency's motion to dismiss)

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