

# Real Property, Financial Services, & Title Insurance Update: Week Ending August 20, 2021

August 20, 2021

## Real Property Update

- **Foreclosure / Attorneys' Fees:** Defendant borrowers entitled to prevailing party attorneys' fees in foreclosure action, notwithstanding the fact that they prevailed on standing grounds – [Blyth v. Ocwen Loan Servicing, LLC](#), No. 4D20-537 (Fla. 4th DCA Aug. 18, 2021) (reversed and remanded)
- **Foreclosure / Attorneys' Fees:** Because defendant borrowers proved that the contract (although unenforceable) existed between the parties, they were entitled to prevailing party attorneys' fees in foreclosure action – [Maisonneuve v. Situs Invs., LLC](#), No. 4D20-2397 (Fla. 4th DCA Aug. 18, 2021) (reversed and remanded)

## Financial Services Update

- **FDCPA / False or Misleading Information:** Collection letter identifying unpaid loan, as well as the current and former creditors, is clear, plain, and understandable under the “least sophisticated consumer” standard – [Hernandez v. Oliphant Fin., LLC](#), No. 8:20-cv-00873 (M.D. Fla. Aug. 13, 2021)
- **FDCPA / Concrete Injury:** Transmittal of a consumer's personal information to a third-party vendor for sending a dunning letter constitutes a communication “in connection with the collection of any debt” within the meaning of section 1692c(b), a violation of which gives rise to a concrete injury in fact for Article III standing – [Santiago v. Medicredit, Inc.](#), No. 0:21-cv-61424 (S.D. Fla. Aug. 12, 2021)
- **FDUTPA / Pleading Requirements:** FDUTPA claims are subject to the heightened pleading requirements of Fed. R. Civ. P. 9(b) – [Jackson v. Anheuser-Busch Inbev SA/NV, LLC](#), No. 1:20-cv-23392 (S.D. Fla. Aug. 18, 2021)

- **FDCPA / Disclosure Requirements:** FDCPA does not require a debt purchaser to disclose the chain of title by which it acquired the debt – [Rosenberg v. Frontline Asset Strategies, LLC](#), No. 1:21-cv-00175 (E.D.N.Y. Aug. 15, 2021); [Ortiz v. Asset Recovery Sols., LLC](#), No. 1:21-cv-00779 (E.D.N.Y. Aug. 15, 2021) (actions consolidated for purposes of decision)

## Title Insurance Update

- **Policy Exceptions:** Exceptions in title insurance policies for loss, damages, and expense arising by reason of items not shown in the public records held inapplicable to exclude coverage for county ordinance restricting insureds' use of a road passing through their land, but coverage was excluded under a special exception in one of insureds' title policies disclaiming coverage for premises falling within the bounds of roads or highways – [Munden v. Stewart Title Guar. Co.](#), No. 20-35336 (9th Cir. 2021) (affirming in part and reversing in part summary judgment)

## Related Practices

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