

Real Property, Financial Services, & Title Insurance Update: Week Ending August 6, 2021

August 06, 2021

Real Property Update

- **Easement / Interpretation:** County ordinance triggered abandonment clause in easement, which provided that county would be deemed to have abandoned easement if it attempted to use easement for a purpose not specified therein, and no other source of law forestalled or limited easement's abandonment clause's operation – [A Flock of Seagirls LLC v. Walton Cnty. Fla.](#), No. 20-12584 (11th Cir. Aug. 5, 2021) (reversed and remanded)
- **Foreclosure Sale / Bankruptcy / Automatic Stay:** Court lacked jurisdiction to determine that bankruptcy automatic stay did not operate to bar the sale of real property – [Christopher v. Bank of Am., N.A.](#), No. 2D20-198 (Fla. 2d DCA Aug. 4, 2021)
- **Recording / Improper Indexing:** Assignment of mortgage, which was not indexed properly, was still recorded in compliance with section 695.11, Florida Statutes, and the mortgage placed Presidential on notice that further inquiry was needed to determine existence of any modifications – [2000 Presidential Way, LLC v. Bank of N.Y. Mellon](#), No. 4D20-1811 (Fla. 4th DCA Aug. 4, 2021)
- **Recording / Improper Indexing:** Indexing is not an essential element of recording, and when a party complies with recording statute, constructive notice attached and will not be destroyed by errors committed by clerk – [2000 Presidential Way, LLC v. Bank of N.Y. Mellon](#), No. 4D20-1811 (Fla. 4th DCA Aug. 4, 2021)

Financial Services Update

- **TCPA / Personal Jurisdiction:** California district court had personal jurisdiction over New York defendant because the defendant failed to (1) contradict the consumer's allegations that the defendant required its agents to record calls and use a certain script and web domain when placing calls to California numbers and (2) demonstrate that California would be an unreasonable jurisdiction – [Ewing v. BF Advance, LLC](#), No. 3:20-cv-01748 (S.D. Cal. Aug. 2, 2021)
- **FDCPA / Debt Collector:** Defendant cannot rely on consumer's position that mortgage is not in default to support defendant's contention that it is not a debt collector under the FDCPA – [Makhnevich v. MTGLQ Invs., LP](#), No. 1:19-cv-00072 (S.D.N.Y. Aug. 4, 2021)
- **FCRA / Standing:** Consumer who filed suit against credit reporting agency for violation of the FCRA because the agency reported a drop in his credit score when his mortgage company temporarily suspended his mortgage payments due to COVID lacked standing to pursue the claim because he failed to allege that his credit report was disseminated to any third party – [Grauman v. Equifax Info. Servs., LLC](#), No. 2:20-cv-03152 (E.D.N.Y. July 16, 2021)

Title Insurance Update

- No cases to report.

Related Practices

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