

Real Property, Financial Services, & Title Insurance Update: Week Ending December 24, 2021

December 28, 2021

Real Property Update

- **Devise of Homestead Property:** Devise of Homestead Property: Decedent's homestead property did not pass via decedent's last will and testament because decedent made invalid devise of homestead property and thus homestead property passed immediately at decedent's death to decedent's spouse for life with a vested remainder interest in each of decedent's sons, pursuant to statutory laws of intestacy – [Ballard v. Pritchard](#), No. 2D20-2967 (Fla. 2d DCA Dec. 22, 2021) (reversed and remanded)
- **Receiver / Safe Harbor Protection:** Plain language of safe harbor statute, section 718.116(1)(b)(1), which limits liability of a first mortgagee and its successors and assigns, for past due condominium assessments, applies to a receiver appointed at condominium association's request – [Wilmington Sav. Fund Soc'y, FSB v. Gulfstream of Las Olas Condo. Ass'n, Inc.](#), No. 4D20-1443 (Fla. 4th DCA Dec. 22, 2021) (reversed and remanded)

Financial Services Update

- **FDCPA / Standing / Dissipation of Risk of Future Harm:** Plaintiff failed to establish a sufficient injury in fact to establish standing to file suit where risk of future harm had dissipated before filing complaint; emotional distress alone is not a concrete injury to confer standing under the FDCPA – [Toste v. Beach Club at Fontainebleau Park Condo. Ass'n, Inc.](#), No. 1:20-cv-23771 (S.D. Fla. Nov. 16, 2021) (dismissing case with prejudice)
- **FDCPA / Standing / Emotional Distress:** Emotional distress alone is not a concrete injury to confer standing under the FDCPA – [Toste v. Beach Club at Fontainebleau Park Condo. Ass'n, Inc.](#), No. 1:20-cv-23771 (S.D. Fla. Nov. 16, 2021) (dismissing case with prejudice)

- **TCPA / ATDS:** Plaintiff's allegations that defendant used an ATDS to contact customers failed under TCPA because the platform only contacted phone numbers specifically provided by consumers during registration process because the list was not populated randomly – [Austria v. Alorica, Inc.](#), No. 2:20-cv-05019 (C.D. Cal. Dec. 16, 2021) (granting motion to dismiss TCPA claim with prejudice)
- **FDCPA / Standing / Concrete Injury in Fact:** Plaintiff's allegations of “sewer service,” failing to serve a debtor and filing a fraudulent affidavit attesting to service so that when debtor later fails to appear in court, a default judgment can be entered, were sufficient to establish a concrete injury from the risk of harm the FDCPA was designed to protect against – [Fleming v. Provest Cal. LLC](#), No. 5:21-cv-04462 (N.D. Cal. Dec. 22, 2021) (denying motion to remand)

Title Insurance Update

- **Right of Access:** Undefined term “access” in owner's title insurance policy, which insured “right of access,” was ambiguous; thus, court construed same liberally in favor of insured to hold that *pedestrian* access was not sufficient access and that *vehicular* access was required – [First Am. Title Ins. Co. v. GS Industries, LLC](#), No. 1:21-cv-00078 (D. Haw. Dec. 16, 2021) (granting insured summary judgment; denying insurer summary judgment)

Related Practices

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