

Real Property, Financial Services, & Title Insurance Update: Week Ending January 15, 2021

January 15, 2021

Real Property Update

No cases of interest to report.

Financial Services Update

- **Breach of Contract & Pre-Suit Notice:** Consumer's failure to abide by a mortgage's notice and cure provision barred his breach of contract claim - [Cooper v. PennyMac Loan Servs., LLC](#), No. 1:20-cv-21546 (S.D. Fla. Dec. 23, 2020) (ordering dismissal)
- **FCCPA / Convenience Fees:** Servicer's processing fee for accepting mortgage payment by phone is not considered a debt under the FCCPA - [Cooper v. PennyMac Loan Servs., LLC](#), No. 1:20-cv-21546 (S.D. Fla. Dec. 23, 2020)
- **TCPA / Subject Matter Jurisdiction:** Court has subject matter jurisdiction over TCPA claim based on robocalls that occurred before the U.S. Supreme Court ruled that the government-debt exception in the TCPA was unconstitutional because the Supreme Court's invalidation of a portion of the TCPA does not invalidate all of the TCPA - [Stoutt v. Travis Credit Union](#), No. 2:20-cv-01280 (E.D. Cal. Jan. 12, 2021) (denying motion for judgment on pleadings)

Title Insurance Update

- **Policy Exception / Obligation to Defend & Indemnify:** Title insurer was not required to defend and indemnify plaintiffs in an action for adverse possession when the policy included an exception for claims arising from the rights of persons in possession and where there was no factual or legal basis on which the title insurer might eventually be obligated to indemnify plaintiffs - [Melamed v. First Am. Title Ins. Co.](#), No. 1408/17 (N.Y. App. Div. Jan. 13, 2021) (affirmed)
- **Claim Valuation / Date of Loss:** Plaintiff's date of loss was not the date plaintiff first recognized that a potential issue existed regarding ownership of the disputed area, but the date plaintiff made a claim upon his title insurance policy - [Harrigan v. Fidelity Nat'l Title Ins. Co.](#), No. CV 17-6075934 (Conn. Super. Ct. Nov. 19, 2020) (finding breach of policy obligations and awarding damages)
- **Unfair Insurance Settlement Practices:** Absent a finding of bad faith, title insurer did not engage in unfair claims settlement practices under the Connecticut Unfair Trade Practices Act - [Harrigan v. Fidelity Nat'l Title Ins. Co.](#), No. CV 17-6075934 (Conn. Super. Ct. Nov. 19, 2020) (order denying plaintiff's claim)

Related Practices

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