

Real Property, Financial Services, & Title Insurance Update: Week Ending November 19, 2021

November 19, 2021

Real Property Update

- **Foreclosure / Reverse Mortgage:** Surviving spouse who did not sign the note did not qualify as a “borrower” by signing the mortgage and related documents – [OneWest Bank, N.A. v. Leek-Tannenbaum](#), No. 3D18-244 (Fla. 3d DCA Nov. 17, 2021) (reversed with directions to enter judgment of foreclosure)

Financial Services Update

- **TCPA / Class Action Settlement:** Court rejected proposed class action settlement, which would award \$25 in damages for each valid claim, because it was on the low end of comparable TCPA settlements and did not distinguish between class members whose cell phones were called once and those who were called multiple times, proposed class representative award of \$15,000 is excessive – [Estate of O’Shea v. Am. Solar Sol., Inc.](#), No. 3:14-cv-00894 (S.D. Cal. Oct. 25, 2021) (denying without prejudice joint motion for preliminary approval of settlement)
- **TCPA / Class Action Settlement / Class Rep Award:** Proposed class representative award of \$15,000 is excessive – [Estate of O’Shea v. Am. Solar Sol., Inc.](#), No. 3:14-cv-00894 (S.D. Cal. Oct. 25, 2021) (denying without prejudice joint motion for preliminary approval of settlement)
- **TCPA / Class Certification:** Class certification denied where plaintiff failed to identify a method by which the class could be ascertained, and determining whether an individual was within the proposed class would necessarily entail an individualized analysis to determine whether they had an established business relationship – [Sapan v. Yelp, Inc.](#), No. 3:17-cv-03240 (N.D. Cal. Nov. 15, 2021) (denying motion to certify class)

- **FCRA / Notification:** Consumer failed to state claim against furnisher for failing to remove notation that her account was in dispute where consumer failed to plead that she directly notified any entity that she no longer disputed the account – [Hunter v. Equifax Info. Sols., LLC](#), No. 1:20-cv-00639 (W.D.N.Y. Nov. 12, 2021) (dismissing complaint with leave to amend)
- **FCRA / Standing:** Consumers who challenged credit reporting agency's procedures, arguing they led to potential inaccuracies, failed to establish standing because they did not suffer concrete harm; potential future harm is not sufficient for Article III standing – [Maddox v. Bank of N.Y. Mellon Tr. Co., N.A.](#), No. 19-1774 (2d Cir. Nov. 17, 2021) (vacating district court order denying defendant's motion for judgment on the pleadings and remanding for dismissal)

Title Insurance Update

- **Enforcement of Settlement Agreement:** Covenant not to sue in release and settlement agreement barred developer and investors' claims against title insurer – [ALR Oglethorpe, LLC v. Fidelity Nat'l Title Ins. Co.](#), No. A21A0989 (Ga. Ct. App. Sept. 27, 2021) (affirming summary judgment in favor of title insurer)
- **Contribution / Indemnification:** Title insurer was not joint tortfeasor with law firm, and thus investors had no right to seek contribution or indemnification from title insurer – [ALR Oglethorpe, LLC v. Fidelity Nat'l Title Ins. Co.](#), No. A21A0989 (Ga. Ct. App. Sept. 27, 2021) (affirming summary judgment in favor of title insurer)
- **Class Action / Unfair Competition:** Individual lacked standing, as either an individual or a class representative, to bring an unfair competition law claim seeking restitution and injunctive relief against title insurer because individual failed to show that he suffered an injury in fact and lost money or property as a result of unfair competition – [Villanueva v. Fidelity Nat'l Title Co.](#), No. H041870, H042504 (Cal. Ct. App. Nov. 12, 2021) (reversing trial court's decision and entering an order directing dismissal in favor of title insurer)
- **Removal / Remand:** Defendant's untimely removal to the wrong venue required that the action be remanded to state court instead of transferred to the appropriate federal district court – [Fidelity Nat'l Title Ins. Co. v. CRH Americas, Inc.](#), No. 3:21-cv-00688 (M.D. Pa. Nov. 17, 2021) (overruling defendant's objections to the magistrate judge's report and recommendation and granting the title insurer's motion to remand)
- **Sales & Use Tax:** Sales and use tax as applied to title insurer's lease of business equipment did not violate Article XIII, § 28(f) of California Constitution – [First Am. Title Ins. Co. v. Cal. Dep't of Tax & Fee Admin.](#), No. D077970 (Cal. Ct. App. Nov. 12, 2021) (reversing trial court's judgment and vacating writ of mandate)

Related Practices

[Real Property Litigation](#)

[Consumer Finance](#)

[Title Insurance](#)

©2024 Carlton Fields, P.A. Carlton Fields practices law in California through Carlton Fields, LLP. Carlton Fields publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.