

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

September 24, 2021

Real Property Update

- **Foreclosure / Section 702.036 / Eviction:** Former borrower failed to establish entitlement to stay of writ of possession pending appeal; section 702.036 solely provides for monetary damages against the wrongfully foreclosing lender where the party seeking relief from the final judgment of foreclosure consented to such foreclosure and title has passed to an innocent third-party buyer – [Rodriguez v. Bank of N.Y. Mellon](#), No. 3D21-1778 (Fla. 3d DCA Sept. 22, 2021) (denying motion to stay)
- **Foreclosure / HOA Lien:** County court erred in ordering its prior final order void and vacating it pursuant to Florida Rule of Civil Procedure 1.540(b)(4) because its final order was res judicata, where appeals to the circuit court were dismissed, and the county court had both personal and subject matter jurisdiction over this class of cases – [Ge v. Swearingen & Assocs., Inc.](#), No. 5D21-262 (Fla. 5th DCA Sept. 24, 2021) (reversed and remanded)

Financial Services Update

- **RESPA / Standing:** Only borrowers have standing to assert claims under RESPA – [Amelina v. Selene Fin. LP](#), No. 3:21-cv-00512 (S.D. Cal. Sep. 20, 2021)
- **FDCPA / Debt Collector / Servicers:** A loan servicer is not a “debt collector” under the FDCPA – [Amelina v. Selene Fin. LP](#), No. 3:21-cv-00512 (S.D. Cal. Sep. 20, 2021)

Title Insurance Update

- **Motion to Remand / Amount in Controversy:** Title insurer improperly removed case where it failed to prove, by the preponderance of the evidence, that the amount in controversy exceeded \$75,000 – [U.S. Bank Nat'l Ass'n v. Fidelity Nat'l Title Grp., Inc.](#), No. 2:20-cv-02239 (D. Nev. Sept. 20, 2021) (granting motion to remand)

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