

# Real Property, Financial Services, & Title Insurance Update: Week Ending April 8, 2022

April 08, 2022

## Real Property Update

- **Foreclosure / Bankruptcy:** Trial court erred in entering final order precluding defendant from raising any defenses in foreclosure action based upon surrender in bankruptcy because (i) debtor only surrendered legal interest in the property in the bankruptcy to the secured creditor, and although challenge to entitlement to foreclose is not permitted, (ii) debtor may be permitted to challenge the amounts due, which may impact a claimed right of redemption – [Centrella v. Bank of N.Y. Mellon](#), No. 2D20-3006 (Fla. 2d DCA Apr. 8, 2022) (reversed with instruction on remand)
- **Inverse Condemnation / Taking:** COVID regulations imposed on liquor establishments were not a taking of property under Florida law because (i) numerous businesses were similarly financially impacted; (ii) sellers of alcohol are a highly regulated business, and statute allows the governor to halt the sale of alcohol during an emergency; and (iii) the restrictions were a valid use of the state's police power to protect the general welfare – [Orlando Bar Grp., LLC v. DeSantis](#), No. 5D21-1248 (Fla. 5th DCA Apr. 8, 2022) (affirmed)
- **Injunction:** Court's ruling that a final judgment "run with the land" violated defendants' right to procedural due process because complaint merely sought to enjoin neighbors' use of lighting on their dock and did not request a permanent injunction running with the land – [Butler v. Brown](#), No. 5D21-1494 (Fla. 5th DCA Apr. 8, 2022) (reversed)
- **Homestead:** Florida's constitutional homestead exemption does not allow a probate court to reimburse personal representative fees and costs from proceeds of homestead property – [Lanford v. Phemister](#), No. 5D21-1015 (Fla. 5th DCA Apr. 8, 2022) (affirmed in part, reversed in part)

## Financial Services Update

- **Res Judicata / Consent Judgment:** Res judicata effects of earlier lawsuit resolved by consent judgment were measured by reference to terms of consent judgment, not by the complaint, and CFPB could sue Ocwen for alleged violations occurring during certain time period, provided that they weren't covered by consent judgment's servicing standard, monitoring, and enforcement regime – [Consumer Fin. Prot. Bureau v. Ocwen Fin. Corp.](#), No. 21-11314 (11th Cir. Apr. 6, 2022)
- **FCRA / Factual Inaccuracy:** Plaintiff did not demonstrate a factual inaccuracy in reporting where plaintiff alleged she had properly rescinded a contract but furnisher argued that those efforts to rescind were ineffectual and debt was still owed; unresolved contract dispute constituted legal dispute and not a factual inaccuracy – [Holden v. Holiday Inn Club Vacations Inc.](#), No. 6:19-cv-02373 (M.D. Fla. Feb. 28, 2022) (granting defendant's partial motion for summary judgment)
- **FDCPA / Standing:** Plaintiff claimed that debt collector's letter violated section 1692g by failing to include a clear statement of her statutory right to dispute the debt and request verification, causing her confusion and to forgo her statutory right; confusion was not a concrete harm, plaintiff's injury was not closely related to one traditionally recognized as providing basis for a lawsuit, and plaintiff suffered no de facto injury that Congress elevated – [Klein v. Receivable Mgmt. Grp., Inc.](#), No. 8:21-cv-0678 (M.D. Fla. Mar. 30, 2022) (remanded)

## Title Insurance Update

- **Title Agency / Professional Liability Policy / Email Scam:** Title agent's professional liability insurance policy excluded any claims arising out of conversion (including those committed by third parties), which applied to exclude coverage for losses arising from email scam whereby closing agent who fell victim wired funds to scammer pursuant to fraudulent transfer instructions – [ABL Title Ins. Agency, LLC v. Maxum Indem. Co.](#), No. 2:15-cv-07534 (D.N.J. Mar. 31, 2022) (granting defendant's summary judgment motion; denying plaintiff's summary judgment motion)
- **Title Policy / Coverage / Exception:** Insured failed to state a claim for breach of title insurance policy against underwriter for loss arising from insured's lack of fee simple ownership of common elements of condominium property, where policy excluded losses arising by reason of the terms and conditions of the declaration of condominium, and where insured's loss was clearly based on insured's failure to take ownership of certain areas of the property that were converted to common elements under the terms of the declaration – [Amerco Real Estate Co. v. First Am. Title Ins. Co.](#), No. 1:21-cv-00628 (M.D. Pa. Apr. 4, 2022) (granting motion to dismiss)

## Related Practices

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