

Real Property, Financial Services, & Title Insurance Update: Week Ending February 11, 2022

February 12, 2022

Real Property Update

- **Lease Option / Fair Market Value:** While the market value of property subject to a lease-purchase option is generally determined as unencumbered by the lease, specific language instructing appraisers to use the fixed rental revenue of the lease governed - [Boca Raton Cmty. Redevelopment Agency v. Crocker Downtown Dev. Assocs.](#), No. 4D21-873 (Fla. 4th DCA Feb. 9, 2022) (judgment affirmed)

Financial Services Update

- **FCCPA, FDCPA & FDUTPA / Litigation Privilege:** Florida's litigation privilege does not conclusively apply by merely establishing there were pending foreclosure proceedings when a payoff statement was sent - [Salter v. PHH Mortg. Corp.](#), No. 0:21-cv-62318 (S.D. Fla. Feb. 9, 2022)
- **FCCPA, FDCPA & FDUTPA / Recording Fee:** Loan servicer's charges for a recording fee in excess of what is actually due and for a non-itemized "recoverable balance" may constitute a violation of the FCCPA, FDCPA, and FDUTPA - [Salter v. PHH Mortg. Corp.](#), No. 0:21-cv-62318 (S.D. Fla. Feb. 9, 2022)
- **FDCPA & FCCPA / Class Certification:** Named representative was not a member of the proposed class of individuals who received a dunning letter and also paid the debt referenced in the collection letter; named representative received the dunning letter but did not pay the debt referenced therein and therefore was not a part of the proposed class - [Gartrell v. J.J. Marshall & Assocs., Inc.](#), No. 3:19-cv-00442 (M.D. Fla. Feb. 8, 2022) (denying class certification)

- **FCCPA / Section 559.72(7) / COVID-19:** FCCPA's prohibition against harassing debt collection communications was not violated where a property manager emailed and called tenant about past due rent during the height of COVID-19 - [Lawrence v. FPA Villa Del Lago, LLC](#), No. 8:20-cv-01517 (M.D. Fla. Feb. 4, 2022)

Title Insurance Update

- **Bad Faith:** Insured's allegations that title insurer did not clear IRS lien from insured's property until more than 100 days after insured's first request were sufficient to state a plausible bad faith claim against title insurer - [May v. Old Republic Nat'l Title Ins. Co.](#), No. 4:21-cv-00093 (M.D. Ga. Feb. 9, 2022) (denying title insurer's motion to dismiss)
- **Declaratory Relief / Subject Matter Jurisdiction / Standing:** Title insurer lacked standing to pursue declaratory relief claim against insured relating to scope of coverage under title insurance policies because 2018 letter from insured to title insurer did not constitute a claim for coverage such that a substantial, ongoing controversy existed between the parties - [Fidelity Nat'l Title Ins. Co. v. MidAtlantic Farm Credit, ACA](#), No. 8:21-cv-01302 (D. Md. Feb. 8, 2022) (granting motion to dismiss)
- **Negligence / Closing Agent's Duty:** Closing agent's fiduciary duty to record the mortgage was to the mortgagee, not the title insurer, and title insurer's negligence or breach of fiduciary duty claim against agent was barred by the economic loss doctrine - [WFG Nat'l Title Ins. Co. v. Paradise Settlement Servs. LLC](#), No. 20 CV H 02 0078 (Ohio Com. Pl. Dec. 14, 2021) (adopting the magistrate's decision and granting judgment in favor of closing agent as to title insurer's negligence claim, to the extent the title insurance agency asserted one in its own right)

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