

# Real Property, Financial Services, & Title Insurance Update: Week Ending July 29, 2022

July 29, 2022

## Real Property Update

- **Foreclosure / Standing:** Dismissal for lack of standing was improper where foreclosing lender proved standing by special indorsement on the note and related indorsement timing evidence – [Deutsche Bank Nat’l Tr. Co. v. Russell](#), No. 1D21-1552 (Fla. 1st DCA July 27, 2022) (reversed and remanded)
- **Lease Option to Purchase:** Summary judgment was proper where purchase option and right of first refusal terms defined in a lease agreement conclusively establish the effective periods of those terms had expired by the time attempts to execute right of first refusal – [Sternberg v. RP & NP Corp.](#), No. 3D21-2045 (Fla. 3d DCA July 27, 2022) (summary judgment affirmed)
- **Eviction / Depositing Rent Into Court Registry:** Trial court lacked discretion to stay final judgment of possession resulting from tenant’s failure to pay rent during the pendency of the case – [Bimini Props., Inc. v. Puff or Sip Hookah Lounge & Liquor Store, LLC](#), Nos. 3D21-2350 & 3D21-2426 (Fla. 3d DCA July 27, 2022) (summary judgment affirmed)
- **Foreclosure / Homestead:** Trial court erred by refusing to foreclose equitable lien on homestead purchased with funds obtained by fraud – [Renda v. Price](#), No. 4D21-534 (Fla. 4th DCA July 27, 2022) (reversed and remanded)

## Financial Services Update

- **Class Action / Standing / Class Members:** TCPA settlement class definition did not meet Article III standing requirements because definition included individuals who received a single text message (which is not sufficient to satisfy concrete injury requirement) – [Drazen v. Pinto](#), No. 21-10199 (11th Cir. July 27, 2022) (vacating class certification and settlement and remanding in order to give parties opportunity to redefine the class)
- **FDCPA / Scope of “Communication”:** Concluding that as long as a call relays information regarding a debt, it is a “communication,” regardless of whether it discloses or implies the existence of the debt – [Raze v. Everest Receivable Servs., Inc.](#), No. 1:19-cv-01094 (W.D.N.Y. July 22, 2022) (granting in part and denying in part debt collector’s summary judgment motion)
- **FDCPA / Third-Party Communication:** Leaving message with third party during a location-acquisition call after the third party declined to provide location information did not take the call outside of section 1692b’s safe harbor, nor did it violate any explicit or implicit prohibition of the FDCPA – [Raze v. Everest Receivable Servs., Inc.](#), No. 1:19-cv-01094 (W.D.N.Y. July 22, 2022) (granting in part and denying in part debt collector’s summary judgment motion)

## Title Insurance Update

- **Breach of Warranty of Title:** Title insurer’s claim (as subrogee for its insured) for breach of warranty of title against seller after insurer paid to resolve its insured’s claim failed because of a mutual mistake of fact; the offer and acceptance prepared by title company’s representative showed that both seller’s and buyer’s respective officers expected the title work and deed would show all recorded easements, and neither expected that title company engaged by purchaser would fail to document any easements of record – [Commonwealth Land Title Ins. Co. v. JMG Invs., Inc.](#), No. 4:20-cv-01514 (E.D. Ark. July 26, 2022) (entering judgment against title insurance company and dismissing its cause of action)
- **Snap Removal:** Insured’s claims against title insurers could not be removed to federal court on diversity jurisdiction grounds where title insurers attempted to remove the case before the forum defendant had been served – [Bank of Am., N.A. v. Fidelity Nat'l Title Grp., Inc.](#), No. 2:21-cv-00399 (D. Nev. July 25, 2022) (granting motion to remand)
- **Snap Removal:** Insured’s claims against title insurers could not be removed to federal court on diversity jurisdiction grounds where title insurers attempted to remove the case before the forum defendant had been served – [Bank of Am., N.A. v. Fidelity Nat'l Title Grp., Inc.](#), No. 2:21-cv-00523 (D. Nev. July 25, 2022) (granting motion to remand)

# Related Practices

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