

Real Property, Financial Services, & Title Insurance Update: Week Ending June 3, 2022

June 03, 2022

Real Property Update

- **Foreclosure / Lost Note:** Although evidence presented to establish purported right to enforce lost note was not particularly impressive, there was enough evidence to require court's rendering of a judgment on the merits, and, therefore, the court erred by involuntarily dismissing the action – [U.S. Bank Nat'l Ass'n v. Martinez](#), No. 2D21-1351 (Fla. 2d DCA June 3, 2022) (reversed and remanded with instructions)
- **Real Estate Contract / Termination:** Buyers had right to terminate real estate contract for failure to close by the “drop dead” date of the contract and also because the notice of lis pendens on property could not be considered discharged for purposes of obtaining clear title – [Inlet Colony, LLC v. Martindale](#), No. 4D21-2330 (Fla. 4th DCA June 1, 2022) (affirmed)
- **Regulatory Taking:** Because COVID orders were regulations affecting appellants' ability to use their property (as opposed to a physical appropriation and per se taking of appellants' property), the *Penn Central* test was appropriate to employ in determining whether COVID orders amounted to a taking; applying *Penn Central* factors to case at hand, COVID orders did not constitute a taking – [Orlando Bar Grp., LLC v. DeSantis](#), No. 5D21-1248 (Fla. 5th DCA June 3, 2022) (affirmed)
- **Categorical Regulatory Taking:** Executive orders resulted in temporary cessation and limitation of appellants' businesses, not a complete and permanent loss of ability to do business – [Orlando Bar Grp., LLC v. DeSantis](#), No. 5D21-1248 (Fla. 5th DCA June 3, 2022) (affirmed)

Financial Services Update

- **FCRA / Prima Facie Showing:** Just as in a lawsuit against a CRA, to prevail on an FCRA claim against a furnisher, a consumer must make a prima facie showing that the furnisher's report was inaccurate – [Gross v. CitiMortgage, Inc.](#), No. 20-17160 (9th Cir. May 16, 2022) (reversed and remanded)

Title Insurance Update

- **Duty to Defend:** Title insurer did not have a duty to defend its insured against consequences of the insured's own acts where the policy did not provide coverage for loss caused by the insured's breach of a purchase agreement – [Salas v. Commonwealth Land Title Ins. Co.](#), No. 3:21-cv-00890 (N.D. Fla. Apr. 5, 2022)

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