

Real Property, Financial Services, & Title Insurance Update: Week Ending August 30, 2019

August 30, 2019

Real Property Update

- **Foreclosure:** final judgment of foreclosure reversed where mortgage reformation improperly prejudiced lienholder with a recorded money judgment's rights; amount of debt not supported by competent, substantial evidence where testimony contradicted by loan documents; amount of debt and corresponding bid credit incorrectly included funds on which the evidence failed to prove the payment of required intangible and documentary stamp taxes - [Atkins N. Am., Inc. v. Tallahassee MH Parks, LLC](#), No. 1D17-2996 (Fla. 1st DCA Aug 29, 2019) (reversed and remanded)
- **Foreclosure / Fees:** foreclosure defendant cannot establish entitlement to fees based on Florida Statute, section 57.105(7) if it successfully defended against foreclosure based on a theory that bank lacked standing - [Hopson v. Deutsche Bank Nat'l Trust Co.](#), No. 2D18-673 (Fla. 2d DCA Aug. 28, 2019)
- **Adverse Possession:** party proved that he and his predecessors in interest had held subject property in a hostile manner for requisite 7 year statutory period by accepting delivery of and recording deed in good faith belief that it conveyed ownership to him - [Batterbee v. Roderick](#), No. 2D18-2037 (Fla. 2d DCA Aug. 30, 2019)

Financial Services Update

- **FDCPA / 1692a / Creditor:** association collecting an assessment is not a debt collector - [Ali v. LH Alliance, Inc.](#), No. 19-cv-61387 (S.D. Fla. Aug. 23, 2019)
- **FDCPA / Bankruptcy:** claim under Section 524 of Bankruptcy Code could not be analyzed using the "least sophisticated consumer" standard - [In re Roth v. Nationstar](#), No. 17-11444 (11th Cir. Aug. 28, 2019)

- **TCPA / Standing:** single text message did not provide Article III standing for TCPA claim - [Salcedo v. Hanna](#), No. 17-14077 (11th Cir. Aug. 28, 2019)
- **EFTA / Safe-Harbor:** EFTA's safe-harbor provision does not protect a financial institution from challenges to the substance of its opt-in agreement - [Tims v. LGE Cmty. Credit Union](#), No. 17-14968 (11th Cir. Aug. 27, 2019)

Title Insurance Update

- **RESPA:** borrower did not state RESPA claim against title insurance agent for excessive fees where there was no allegation that the fees were split with someone else or were provided in exchange for an agreement to refer business - [Lannin v. NRT Title Agency, LLC](#), No. 18-15146 (D.N.J. Aug. 27, 2019) (granting in part motion to dismiss)
- **RESPA:** borrower stated RESPA claim against title insurance agent for charges for "Tax and Assessment Searches" and for "Flood Hazard Certificate," where borrower alleged that agent accepted a divided fee for services it did not perform - [Lannin v. NRT Title Agency, LLC](#), No. 18-15146 (D.N.J. Aug. 27, 2019) (denying in part motion to dismiss)

Related Practices

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