

# Real Property, Financial Services, & Title Insurance Update: Week Ending February 4, 2022

February 05, 2022

## Real Property Update

- **Land Use / Vacation Rentals:** Petition for a writ of second tier certiorari was denied because there was no violation of a clearly established principle of law resulting in a miscarriage of justice where circuit court affirmed the decision of the administrative law judge, finding that the petitioners' vested right to the non-conforming use of their properties as vacation rentals did not preclude the county from subjecting the properties to subsequently enacted lawful regulations generally applicable to all such properties, including vacation rental permit and vacation rental manager license requirements - [Handte v. Monroe Cnty.](#), No. 3D21-1527 (Fla. 3d DCA Feb. 2, 2022) (petition denied)
- **Condominiums / Foreclosure / Section 718.116(1)(b) / Safe Harbor:** Clear and unambiguous language of the safe harbor provision in section 718.116(1)(b), Florida Statutes (2018), limited the association's damages to 1% of the original mortgage debt (\$300,000), which is not calculated on a "per unit" basis, for a total award of \$3,000 - not \$168,000 (which would erroneously take into account the 56 units that were the subject of the foreclosure proceedings) - [Trident Asset Mgmt., LLC v. 2050 Condotel Inn Condo. Ass'n, Inc.](#), No. 5D20-2130 (Fla. 5th DCA Feb. 4, 2022) (affirmed in part, reversed in part, remanded with instructions)

## Financial Services Update

No cases of interest to report.

## Title Insurance Update

- **Morris Agreement:** After title insurer agreed to defend insureds on mechanics lien claims under reservation of rights, insured entered into *Morris* agreement whereby it assigned its claims against insurer to third-party company composed entirely of insureds and company then asserted claims against insurer under title policy for breach of contract and bad faith; a *Morrison* agreement mitigates insured's coverage risk when insurer defends under reservation of rights, but to be valid it must (1) provide notice to insurer, (2) demonstrate settlement was free from fraud and collusion, and (3) prove settlement amount was reasonable; trial court granted summary judgment in favor of insurer invalidating *Morris* agreement based on collusion of insureds, citing "unity of parties to the purported *Morrison* agreement" and "significantly inflated judgment amount" - [Centerpoint Mechanic Lien Claims LLC v. Fidelity Nat'l Title Ins. Co.](#), No. 1 CA-CV 21-0127 (Az. App. Ct. Feb. 1, 2022) (affirming summary judgment)
- **Requirement for Loss:** After denial of insured's claim of defective title based on insured's failure to establish any loss, insured sued insurer for breach of policy; court held policy provided insurance only against "loss or damages," not future or possible damages or loss; although insured pleaded a defective title, he could not plead any loss or damage - [Stewart v. JP Morgan Chase Bank, N.A.](#), No. 1:18-cv-07584 (N.D. Ill. Feb. 1, 2022) (denying reconsideration of dismissal)

## Related Practices

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