

# Real Property, Financial Services, & Title Insurance Update: Week Ending October 16, 2020

October 16, 2020

## Real Property Update

- **Foreclosure / Compliance with HUD:** finding, as a matter of first impression in Florida, that a lender can prove compliance with HUD notice requirements by evidence other than a certified mail receipt from the USPS – [Lakeview Loan Servicing, LLC v. Walcott-Barr](#), No.4D19-1582 (Fla. 4th DCA Oct. 19, 2020) (reversed)
- **Validity of Deed / Burden of Proof:** trial court erred by imposing the burden to prove the validity of deeds on those claiming through them, instead of placing the burden on the challenger to prove invalidity – [Drapp v. McDaniel](#), No. 2D19-1949 (Fla. 2d DCA Oct. 14, 2020) (affirmed in part, reversed in part, and remanded)

## Financial Services Update

No cases of interest this week.

## Title Insurance Update

- **Encumbrance:** reservation of right-of-way on an official county map and a related county ordinance that precluded development within the reservation area held to constitute an encumbrance on title that renders title unmarketable and as to which none of policy exclusions apply – [Jericho State Capital Corp. of Florida v. Chicago Title Ins. Co.](#), No. 2017-001646 (S.C. Ct. App. Oct. 7, 2020) (opinion affirming summary judgment in part and reversing in part)

- **Exclusion 1:** reservation of right-of-way on an official county map and a related county ordinance did not come within scope of exclusion for laws relating to the occupancy, use, or enjoyment of the land as the reservation in question held to affect title to the land – [Jericho State Capital Corp. of Florida v. Chicago Title Ins. Co.](#), No. 2017-001646 (S.C. Ct. App. Oct. 7, 2020) (opinion affirming summary judgment in part and reversing in part)
- **Exclusion 2:** reservation of right-of-way on an official county map and a related county ordinance did not come within scope of exclusion for eminent domain because the reservation was not itself a taking and there was an independent eminent domain action that was instituted post-policy – [Jericho State Capital Corp. of Florida v. Chicago Title Ins. Co.](#), No. 2017-001646 (S.C. Ct. App. Oct. 7, 2020) (opinion affirming summary judgment in part and reversing in part)
- **Exclusion 3(d):** reservation of right-of-way on an official county map and a related county ordinance did not come within scope of exclusion for post-policy matters because they were filed years before the policy was issued – [Jericho State Capital Corp. of Florida v. Chicago Title Ins. Co.](#), No. 2017-001646 (S.C. Ct. App. Oct. 7, 2020) (opinion affirming summary judgment in part and reversing in part)
- **Bad Faith:** title insurer had reasonable, good faith basis for contesting insured’s claim – [Jericho State Capital Corp. of Florida v. Chicago Title Ins. Co.](#), No. 2017-001646 (S.C. Ct. App. Ct. Oct. 7, 2020) (opinion affirming summary judgment in part and reversing in part)

## Related Practices

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