

# ALTA

# inSIGHTS

REAL TIME | ON-DEMAND



## **Title Litigation Explained: Risks, Rulings and Real-World Impact**

February 9, 2026

Today's  
ALTA Insights  
Featured  
Sponsor



**CERTIFID**

# Speakers

- **Cheryl Cowherd, Esquire, NTP, KTP, MTP**  
WFG National Agency and Midwest Underwriting Counsel
- **Monica K. Gilroy, Esquire, NTP**  
Managing Attorney, The Gilroy Firm
- **Annie Malave, Esquire**  
First American Senior Underwriting Counsel, National Energy Services



# Victor D. CRIST, solely in an official capacity as the Hillsborough County Clerk of Court v. Manhattan Palms Association, One, LLC, 417 So.3d 464 (July 23, 2025)

## • Facts

- In 2008, Gerlinde Nelson purchased two separate parcels of real property in Hillsborough County and mortgaged each parcel to Region's Bank via separate mortgages. Both mortgages were properly recorded.
- But, the Clerk correctly indexed the mortgage on one parcel under Gerlinde Nelson's name.
- The other mortgage—the one that encumbered the parcel Manhattan Palms subsequently purchased—was incorrectly indexed under the name Gerlinde Nelso. The “n” at the end of Nelson was omitted.



# Victor D. CRIST, solely in an official capacity as the Hillsborough County Clerk of Court v. Manhattan Palms Association, One, LLC, 417 So.3d 464 (July 23, 2025)

## • Facts

- Manhattan Palms purchased the subject property at auction in 2022.
- In March 2023, the property was sold to a third party at a tax deed sale that resulted in a surplus of \$138,222.44.
- Manhattan Palms filed a claim for the surplus in April 2023.
- The following month, Regions Bank. filed a claim in an amount less than the surplus (\$135,151.92)
- In July of 2023, the Clerk sent the entire surplus to Regions.



# Victor D. CRIST, solely in an official capacity as the Hillsborough County Clerk of Court v. Manhattan Palms Association, One, LLC, 417 So.3d 464 (July 23, 2025)

## • Facts

- Manhattan Palms sued the Clerk for negligence alleging that if the Clerk had correctly indexed the Regions Bank mortgage, Manhattan Palms would have found the encumbrance and would not have purchased the property.
- Plaintiff argued that the Clerk owed a duty of care “not to the public generally, but ... to a specific class of persons, namely, those claiming an interest in lands, including those claiming an interest in the subject property, bona fide purchasers of the subject property, and creditors of owners of the subject property,”.
- Manhattan Palms alleged that by omitting the last letter “n” from Gerlinde Nelson’s name when indexing the subject property, the Clerk breached its duty and proximately caused Manhattan Palms’ damages.



# Victor D. CRIST, solely in an official capacity as the Hillsborough County Clerk of Court v. Manhattan Palms Association, One, LLC, 417 So.3d 464 (July 23, 2025)

## • Facts

- The Clerk argues that in actions against the government in tort, a plaintiff must prove that the defendant breached a common law or statutory duty owed to the plaintiff individually and not a tort duty owed to the public generally and therefor sovereign immunity barred the suit.
- The Clerk argues that the omission of the letter “n” occurred when the Clerk entered the 2008 mortgage in the index to the public records and that the Clerk’s duty to index the mortgage derives from section 28.222(2):

The clerk of the circuit court shall record all instruments in one general series called “Official Records.” He or she shall keep a register in which he or she shall enter at the time of filing the filing number of each instrument filed for record, the date and hour of filing, the kind of instrument, and the names of the parties to the instrument. The clerk shall maintain a general alphabetical index, direct and inverse, of all instruments filed for record. The register of Official Records must be available at each office where official records may be filed.



# Victor D. CRIST, solely in an official capacity as the Hillsborough County Clerk of Court v. Manhattan Palms Association, One, LLC, 417 So.3d 464 (July 23, 2025)

## • Facts

- The Clerk argues that Manhattan Palms must not have conducted a title search for encumbrances on the subject property, but rather only searched by name, because a search of the legal description would have turned up the Regions Bank encumbrance.
- Clerk files a Motion to Dismiss. It is denied and the appeal ensues.



# Victor D. CRIST, solely in an official capacity as the Hillsborough County Clerk of Court v. Manhattan Palms Association, One, LLC, 417 So.3d 464 (July 23, 2025)

## • Court's Review of Prior Case Law

- Court finds that the Clerk's duty to index the public record pursuant to section 28.222, Florida Statutes (2008), is for the benefit of the general public, sovereign immunity bars this action.
- Court goes to great length to distinguish First American Title Insurance Co. of *St. Lucie County v. Dixon*, 603 So. 2d 562 (Fla. 4th DCA 1992).
- In *Dixon*, First American sued the St. Lucie County Clerk after losing a suit for failing to discover an incorrectly indexed "claim of interest in land." The Court noted that Florida's legal system regarding interests in land is predicated on the recording of documents relating to claims of interests and reasoned that because the statutory recording scheme was intended to benefit a definable class of individuals—and not just the general public.



# Victor D. CRIST, solely in an official capacity as the Hillsborough County Clerk of Court v. Manhattan Palms Association, One, LLC, 417 So.3d 464 (July 23, 2025)

## • Court's Review of Prior Case Law

- The *Dixon* court found that it is the clerk's proper handling of each document that makes the marketable record title law work and acknowledged that "the clerk has candidly conceded that the function is operational and ministerial."<sup>2</sup> Therefore, the court found that sovereign immunity was not a bar to that action against the clerk. Also the supervisor of the official records for the clerk had acknowledged that office's failure to properly index the notice of claim.
- The holding in *Dixon* may have been based on the clerk's concessions. *Dixon* is the only case in which recovery has been allowed against the government for a public records error, and no case like this since.
- None of the clerk's concessions in *Dixon* were made by the Clerk in the case at hand.



# Victor D. CRIST, solely in an official capacity as the Hillsborough County Clerk of Court v. Manhattan Palms Association, One, LLC, 417 So.3d 464 (July 23, 2025)

- **Court's Review of Prior Case Law**

- *Dixon* held that clerks owe a special duty to bona fide purchasers of property, but Manhattan Palms did not allege it was owed a duty as a purchaser of the property at issue. Instead, Manhattan Palms alleged it was injured by purchasing the property.



# Victor D. CRIST, solely in an official capacity as the Hillsborough County Clerk of Court v. Manhattan Palms Association, One, LLC, 417 So.3d 464 (July 23, 2025)

## • Court's Analysis

- Manhattan Palms cannot establish its rights were in any way affected in 2008 when the Clerk recorded, registered, and indexed the mortgage.
- Manhattan Palms' claim is that, more than a decade after the mortgage was properly recorded, it was injured because it could not find the mortgage in an index search FAILS
- Manhattan Palms admits if it had found the Regions mortgage on the subject property it would not have bid on the property and never would have joined the "discernable class" *Dixon* contemplated.
- Manhattan Palms relied on the index it did so as a member of the general public and the Clerk owed no duty until the purchase.



# Victor D. CRIST, solely in an official capacity as the Hillsborough County Clerk of Court v. Manhattan Palms Association, One, LLC, 417 So.3d 464 (July 23, 2025)

## • Court's Ruling

- Clerk satisfied its special duty by recording the mortgage consistent with Florida Statute just like the Clerk had done in 2008 when the Clerk properly recorded the Regions mortgage.
- Because Manhattan Palms was utilizing the index as a member of the general public, sovereign immunity bars its negligence claim against the Clerk.
- Appellate Court, vacates the Trial Court's Order, remands for the entry of an order dismissing the case and certified a conflict with Dixon

Emerging Trend of Courts finding mis-indexed deeds creates certain notices and presumption-See Groundfloor Holdings, GA, LLC vs. WFG National Title Insurance Company, 375 Ga. App. 6 (March 14, 2025).



# Genesis Fin., Inc. v. Commonwealth Land Title Ins. Co.

## 236 A.D.3d 1127, 228 N.Y.S. 3d 778 (2025)

- **Facts**

- On June 30, 2005, The Lofts on South LLC (Charles Cefalu) purchased property
- Partial cash payment; Remainder was seller carry-back
- The same day, The Lofts on South LLC also executed a second mortgage to Adirondack Real Estate Holdings
- Adirondack obtained a lenders title policy
- Second mortgage recorded July 7, 2005
- December 2005 Adirondack assigned mortgage to Genesis Financial, representing it was in a first position
- 2009 original seller commenced an action to foreclose, alleging his mortgage was in a superior position



# Genesis Fin., Inc. v. Commonwealth Land Title Ins. Co.

## 236 A.D.3d 1127, 228 N.Y.S. 3d 778 (2025)

### • Facts

- While foreclosure action was pending, Genesis commenced current action to obtain damages allegedly caused by Commonwealth's failure to represent Genesis in the foreclosure action as well as for indemnity under the terms of the title insurance policy.
- In foreclosure action, Court determined the mortgage held by original owner had priority over second mortgage held by Plaintiff (Genesis)
- Defendant (Commonwealth) moved for summary judgment in current action, asking for dismissal of complaint based on invalidity of second mortgage which resulted in the title policy being invalid.
- Plaintiff opposed and cross-moved for summary judgment
- Court granted defendant's motion, denied plaintiff's cross-motion and dismissed



# Genesis Fin., Inc. v. Commonwealth Land Title Ins. Co.

## 236 A.D.3d 1127, 228 N.Y.S. 3d 778 (2025)

### • Court's Analysis

- A mortgage conveys “an interest in real property as security for performance of an obligation” Black’s Law Dictionary
- If there is no valid consideration in exchange for a mortgage, a mortgage hasn’t been established and the party has no interest in the property.
- Clearly there was no underlying debt for the Adirondack mortgage, thus the mortgage lacked consideration
- Since Adirondack had no insurable interest in the property, it could not obtain a valid title insurance policy



# Genesis Fin., Inc. v. Commonwealth Land Title Ins. Co. 236 A.D.3d 1127, 228 N.Y.S. 3d 778 (2025)

- No consideration tendered = no mortgage lien on property
- No mortgage lien on property = no enforceable title policy
- Court affirmed lower court's decision



# BMO Bank v Zbrosczyk 2025 IL App (1<sup>st</sup>) 241333

- **Facts**

- February 18, 2008, Plaintiff (BMO) and Defendant (Zbrosczyk) executed a “Equity Line Credit Agreement and Disclosure” secured by a mortgage on a residence in Chicago
- Agreement was for a revolving line of credit up to \$100,000 with term expiring on February 22, 2018 (10 year term)
- Specific terms regarding credit advances, finance charges, etc.
- Agreement also included provision that if defendant failed to make repayment under the terms of the agreement plaintiff can terminate the credit line and require full payment of the balance.
- The mortgage had similar language



# BMO Bank v Zbroszczyk 2025 IL App (1<sup>st</sup>) 241333

## • Facts

- Three letters were sent to defendant by plaintiff
  - 1st one on 8/27/20 – letting him know servicing was being transferred to Dovenmuehle Mortgage
  - 2nd letter was on 7/28/22 – letting him know they were resuming servicing
  - 3rd letter was on 8/22/22 – delinquency notice which indicated it was a “first notice” & payment has not been received and is past due.
- October 4, 2023 plaintiff filed foreclosure action
  - Alleged defendant failed to pay outstanding indebtedness by maturity date of 2/22/18
  - As of September 2023 still owed \$99,973.15 plus interest, penalties, etc.



# BMO Bank v Zbroszczyk 2025 IL App (1<sup>st</sup>) 241333

## • Facts

- December 1, 2023 defendant filed motion to dismiss claiming foreclosure was barred based statute of limitations
  - Argued same amount due as of 8/26/2013 more than 10 years prior to current complaint
  - Defendant claimed he had not made any payments since June 1, 2013
  - Plaintiff claimed the filing of the foreclosure was timely because the cause of action did not accrue until the maturity date of 2/22/18
- Circuit Court granted defendants motion to dismiss stating “the Court measures the running of the statute [of limitations] from August 26, 2013.”
- Plaintiff appealed challenging the date on which the circuit court found the cause of action accrued – 8/26/13, the “Past Due Date” in the delinquency notice letter to the defendant dated 8/22/22 rather than 2/22/18, the maturity date of the agreement.



# BMO Bank v Zbroszczyk 2025 IL App (1<sup>st</sup>) 241333

- **Court**

- Courts generally look to the SOL of the underlying debt in determining the appropriate SOL in a foreclosure action
- Court found the most appropriate description of the agreement is a “revolving credit loan”
- Determine the SOL applicable to actions involving revolving credit loans
- Plaintiff is arguing the applicable SOL is 10 years
- Defendant is arguing the applicable SOL is 5 years
- Court – the applicable SOL is 5 years
- Compare to credit card agreements
- Recognize HELOC and credit card agreements are not identical transactions, both are considered “revolving credit loans” under the law



# BMO Bank v Zbroszczyk 2025 IL App (1<sup>st</sup>) 241333

## • Court

- Cardholder agreement between bank and customer has been found to be similar to a loan
  - Issuance of a credit card doesn't create contract-separate contract created each time the card is used according to terms of cardholder agreement
  - Actions involving credit cards have found 5 year SOL for oral contracts where parol evidence is required to establish terms and conditions of contract
- To be considered promissory note, agreement must provide for payment "absolutely" and "unconditionally".
  - Including requirement that obligation be a definite fixed sum.



# BMO Bank v Zbroszczyk 2025 IL App (1<sup>st</sup>) 241333

- Court
  - Agreement in this case is silent as to amount defendant was to pay.
  - Defendant entitled to borrow up to \$100,000
  - Doesn't specify how much defendant did borrow
  - The agreement is subject to the five year statute of limitations
- Court's Next question:
  - When does the SOL start to run?
  - Plaintiff argues 2/22/18
  - Defendant argues 2/26/13



# BMO Bank v Zbroszczyk 2025 IL App (1<sup>st</sup>) 241333

- **Court's Answer**

- Regardless of either date, they are both out according to the 5 year statute of limitations and therefore the plaintiff's cause of action is time-barred.
- The judgment of the circuit court is affirmed.



# 257-261 20<sup>th</sup> Ave v Roberto, 259 NJ 417; 327 A.3d 1177

## Facts

- Roberto owned a mixed–use property worth an estimated \$535K (no mortgage on the property) and failed to pay \$606 in sewer taxes on the property
- City of Patterson filed tax liens & Plaintiff 257-261 purchased the tax sale certificates at auction
- 11 years later, Plaintiff filed a tax foreclosure complaint
- Roberto did not file an answer or redeem, so the court entered a default judgment in favor of 257-261 29<sup>th</sup> Ave, with a redemption amount of \$32,973.15
- Within 2 months of the court’s judgment Roberto moved to vacate judgment and permit redemption which trial court granted under Rule 4:50-1(f) (exceptional circumstances)



# 257-261 20<sup>th</sup> Ave v Roberto, 259 NJ 417; 327 A.3d 1177

## Facts

- Plaintiff appealed the vacation of judgment
- While the appeal was pending, the U.S. Supreme Court decided *Tyler v Hennepin County*, 598 U.S. 631, 143 S.Ct. 1369 (2023)
- NJ Appellate Division affirmed the trial court, relying, in part on *Tyler*
- Plaintiff petitioned the NJ Supreme Court to review the decision

## ***Tyler v Hennepin County* 598 U.S. 631; 143 S. Ct. 1369**

- Held that the government violates the Takings Clause of the 5<sup>th</sup> Amendment when it keeps surplus value (home equity beyond the tax debt) value from a tax foreclosure



# 257-261 20<sup>th</sup> Ave v Roberto, 259 NJ 417; 327 A.3d 1177

- **Supreme Court of New Jersey**

- The primary issue before the court was whether NJ's Tax Sale Law (prior to its 2024 amendment which incorporated the *Tyler* holding) violated the 5<sup>th</sup> Amendment's Takings Clause
- Plaintiff argued that NJ's pre-2024 Tax Sale Law did not violate the Takings Clause because:
  - (1) NJ did not recognize a protected property right to surplus equity when the equity in Roberto's property was taken
  - (2) Private lienholders are not state actors, so Taking Clause doesn't apply
  - (3) Lienholders due process rights would be violated if *Tyler* is held to apply



# 257-261 20<sup>th</sup> Ave v Roberto, 259 NJ 417; 327 A.3d 1177

- **Court's Ruling**

- NJ Supreme Court agreed with the Appellate Division's conclusion that *Tyler* applied as it was binding precedent that applies to cases on direct review in state court
- Accordingly, NJ's pre-2024 Tax Sale Law, which provided for the forfeiture of a property owner's equity after final judgment, is unconstitutional as it violates the Takings Clause of the 5<sup>th</sup> Amendment



# 257-261 20<sup>th</sup> Ave v Roberto, 259 NJ 417; 327 A.3d 1177

- **Court's Rationale addressed each of Plaintiff's Arguments**

- Court addressed each of Plaintiff's arguments
  - (1) found that NJ property owners do have a recognized right to surplus equity based on historical and traditional legal principles and that right is compensable under the Takings clause
  - (2) Court reasoned that *Tyler* provides the Takings Clause protects property owners from a taking of their property's equity without just compensation and that applies whether the tax certificate holder is the taxing authority or a third-party purchaser proceeding with an interest conveyed by the taxing authority
  - (3) Court declared that the government cannot confer greater rights to a third-party purchaser than the government actually has



# Yono v County of Ingham 2025 Mich. LEXIS 1288

## • Facts

- Yono failed to timely pay property taxes for 2014 and 2015 (totaling \$17,575.41) on commercial real property in Lansing, MI.
- Ingham County Treasurer foreclosed on the property and offered it for sale at public auction
- Property failed to sell and Treasurer deeded the property to the Defendant, Ingham County Land Bank Fast Track Authority (Land Bank) for \$1
- Plaintiff sued in 2020 alleging defendants took his property without just compensation in violation of the Michigan Constitution Takings Clause
- Circuit court ruled in Defendant's favor on a summary judgment motion, relying on a prior Michigan Supreme Court case, *Rafaeli, LLC v Oakland Co.*, which held there was no taking because there were no "surplus proceeds" from the sale of the proceeds



# Yono v County of Ingham 2025 Mich. LEXIS 1288

- **Facts**

- Plaintiff appealed
- The Court of Appeals concluded that *Rafaeli* was not dispositive in this case as the Rafaeli court did not consider what would happen if the real property failed to sell during a foreclosure sale.
- Court of Appeals reversed and remanded the case to the circuit court for further proceedings to determine the property's value
- The court reasoned there was still some sort of taking that the Taking Clause was designed to prevent based on the property having some value as every parcel of property does even though there was no purchase of the property as a result of the tax foreclosure
- The Defendant, Ingham County appealed to the Supreme Court of Michigan



# Yono v County of Ingham 2025 Mich. LEXIS 1288

- **Supreme Court of Michigan**

- The issue before the court was whether there is a taking under the Takings Clause of the Michigan State Constitution when the government forecloses on real property to recover delinquent property taxes and that property fails to sell at a public auction.
- Plaintiff argued that *Rafaeli* was not controlling because it involved real property that sold at public auction, not one that failed to sell and that this case was more similar to *Jackson v Southfield Neighborhood Revitalization Initiative*, in which the MI Court of Appeals held that there is a takings claim notwithstanding a lack of surplus proceeds when the foreclosing government unit did not offer a foreclosed property for sale and instead transferred the property to another governmental entity



# Yono v County of Ingham 2025 Mich. LEXIS 1288

- **Court's Ruling**

- The Supreme Court of Michigan agreed with the Circuit Court's ruling that *Rafaeli* applied and reversed the appeals court decision and reinstated the Ingham Circuit Court's order granting defendants' motion for summary judgment



# Yono v County of Ingham 2025 Mich. LEXIS 1288

## • Court's Rationale

- Rafaeli held that violation of the Takings Clause occurred if the foreclosing government unit (FGU) retained “surplus proceeds” from the sale of the property at a public auction
- Court emphasized the FGU is only required to return any proceeds from the tax foreclosure sale in excess of the delinquent taxes, interest, penalties and fees reasonably related to the foreclosure and sale of the property-no more no less
- When the government does place the property for sale, the result of the sale is the correct metric to determine the value of the property interest the government obtained and therefore is determinative of whether a taking occurred, even if the property doesn't sell and remains in the government's possession.



# Stroble v Okla. Tax Comm'n (In re Stroble) 2025 OK 48

- **Facts**

- In December 2020, Stroble, a member of the Muscogee (Creek) Nation sought a refund of her personal income taxes for tax years 2017-2019 claiming her income as exempt
- The Audit Services Division of the Oklahoma Tax Commission notified Stroble that she did not qualify for the exemption. To qualify, was disallowed as she all 3 requirements must be met: (1) be a tribal member; (2) live and (3) work on Indian land to which the member belongs.



# Stroble v Okla. Tax Comm'n (In re Stroble) 2025 OK 48

## • Facts

- In 2022, an administrative hearing was held in which Stroble presented evidence that she:
  - (1) was an enrolled member of the Muscogee (Creek) Nation;
  - (2) was employed by the legislative branch of the Muscogee (Creek) Nation during that time and her office was located on land owned by the United States in trust for the Creek Tribe of Oklahoma; and
  - (3) lived in the City of Okmulgee, OK, which is within the external boundaries of the Creek Reservation as defined by the Treaty of 1866.
- It was an undisputed fact that Stroble's home was located on unrestricted, non-trust, private fee land, which she acquired from a non-tribal grantor in 2008



# Stroble v Okla. Tax Comm'n (In re Stroble) 2025 OK 48

- **Facts**

- The Administrative Law Judge recommended that the OK Tax Commission grant the protest.
- The Audit Services Division of the Commission filed an application for an *en banc* hearing claiming the ALJ erred.
- The Commission held the *en banc* hearing and found Stroble did not live in “Indian country” (as defined by the Oklahoma Tax Commission’s regulations) for the purposes of the state income tax exemption and denied her protest.
- Stroble appealed, arguing that the *McGirt v Oklahoma*, 591 U.S. 894 (2020) decision established that the area she lived in was within “Indian Country”



# Stroble v Okla. Tax Comm'n (In re Stroble)

2025 OK 48



- **Supreme Court of Oklahoma**

- The issue before the Court was whether Oklahoma could impose tax on a Muscogee (Creek) Nation member who lives and works within the boundaries of the reservation that were recognized in *McGirt*

- **Court's Ruling**

- In a 6-3 decision, the Court held that Stroble did not qualify for the state income tax exemption under the Oklahoma Tax Commission's regulation



# Stroble v Okla. Tax Comm'n (In re Stroble)

2025 OK 48



- **Court's Ruling**

- There was a per curiam opinion, and four concurring opinions that explained the justices varied reasoning to reach their ultimate conclusion that the U.S. Supreme Court's decision in *McGirt* does not extend to the State's civil and taxing jurisdiction.
- The dissent reasoned that there is a long line of U.S. Supreme Court cases that hold the Major Crimes Act definitions for "Indian Country" apply in civil contexts



# Stroble v Okla. Tax Comm'n (In re Stroble) 2025 OK 48

- **Current Status**

- Stroble filed a petition for a writ of certiorari in September 2025
- The Oklahoma Tax Commission filed its response in December 2025
- The U.S. Supreme Court has not yet decided whether to hear the case



# Q&A



# Contact Us

- Cheryl | [ccowherd@wfgtitle.com](mailto:ccowherd@wfgtitle.com)
- Monica | [mkg@gilroyfirm.com](mailto:mkg@gilroyfirm.com)
- Annie | [amalave@firstamerican.com](mailto:amalave@firstamerican.com)

