

Highlights to the 2025–2 Edition

Maine. The Supreme Judicial Court of Maine held that municipal quitclaim deeds issued by a town when the taxpayer and his wife satisfied tax lien mortgages on real property that they held in joint tenancy before 18-month redemption period expired did not sever joint tenancy, and thus, property was not asset of taxpayer’s estate. *Estate of Priest*, 2025 ME 24, 331 A.3d 451 (Me. 2025). [§ 1:8]

Wyoming. A landowner lacked the requisite necessity to establish a private road and the record supported finding of no apparent, obvious, and continuous use of proposed implied easement at time of severance, and an implied easement was not necessary and beneficial to enjoyment of the previously-benefited parcel. *Tilden v. Jackson*, 2025 WY 57, 568 P.3d 1197 (Wyo. 2025). [§ 2:27]

Virginia. The Court of Appeals affirmed a ruling upholding a homeowner’s right to use a private access road, holding that a 1995 deed validly granted an express easement unaffected by the “stranger to the deed” rule and, alternatively, that a prescriptive easement existed. *Catoctin Ridge Homeowners Association, Inc. v. Biller*, 84 Va. App. 306, 913 S.E.2d 333 (2025). [§ 2:25]

Montana. the scope of public access easements burdening northern subdivision’s roads did not include primary access to proposed southern subdivision and that substantial evidence supported county board’s decision that statutory requirements for abandonment of road were met. *GBSB Holding, LLC v. Flathead County Board of County Commissioners*, 2025 MT 22, 420 Mont. 237, 564 P.3d 29 (2025). [§ 2:44]

Washington. As a matter of first impression, the CARES Act requirement that landlords provide 30 days’ notice when evicting tenants only applies to the failure to pay rent, and does not apply to evictions for other reasons such as waste; abrogating *Pendleton Place, LLC v. Asentista*, 29 Wash. App. 2d 516, 541 P.3d 397 (Div. 2 2024). *Housing Authority of County of King v. Knight*, 4 Wash. 3d 324, 563 P.3d 1058 (2025). [§ 3:11]

Sixth Circuit. A developer that was denied a variance for a decommissioned church intended to be converted into a multi-family residential development failed to establish a prima facie case under the FHA that the denial had a disparate impact on members of a protected class or that it was motivated by discriminatory intent and further failed to establish an Equal Protection Clause claim, finding no evidence of selective enforce-

ment or animus, or a Takings Clause Claim concluding that the city's decision did not deprive the property of all economically viable use, and thus no regulatory taking occurred under *Penn Central* factors. *Lathfield Investments, LLC v. City of Lathrup Village*, 136 F.4th 282 (6th Cir. 2025). [§ 3:21]

Virginia. The common-law no-mitigation rule applies even when a contractual remedy is pursued, the acceleration provision in a lease was enforceable, and any rent collected post-reletting properly offsets the accelerated rent. *Bistro Manila, LLC v. Alvah I, LLC*, 83 Va. App. 300, 910 S.E.2d 121 (2025). [§ 3:57]

District of Columbia. The D.C. Court of Appeals upheld a judgment for the lessor in a lease dispute over HVAC and generator work, finding the lessee's fraud claims barred by an integration clause and affirming an attorneys' fee award. *DCA Capitol Hill LTAC, LLC v. Capitol Hill Group*, 332 A.3d 518 (D.C. 2025). [§ 3:59]

Hawaii. The Supreme Court of Hawaii held that it is not lawful for a circuit court to order a partition by condominium property regime. *Robinson v. Zarko*, 155 Haw. 390, 565 P.3d 735 (2025). [§ 4:1]

Fourth Circuit. Routine service charges such as fees for statements of unpaid assessments do not qualify as prohibited transfer fees under North Carolina law distinguishing between legitimate administrative costs and regulated conveyance fees in homeowners' association managed property transfers. *Susan K. Carpenter, Trustee for H. Joe King, Jr. Revocable Trust v. William Douglas Management, Inc.; NextLevel Association Solutions, Inc., d/b/a HomeWiseDocs.com*, 89 F.4th 374 (4th Cir. 2025). [§ 4:5]

District of Columbia. The D.C. Court of Appeals held that a 2014 condominium association foreclosure extinguished Flagstar's first deed of trust lien and was not unconscionable, but reinstated Flagstar's unjust enrichment claim for trial. *Flagstar Bank, FSB v. Advanced Financial Investments, LLC*, 333 A.3d 851 (D.C. 2025). [§ 4:15]

Arizona. The Arizona Supreme Court held that the five-year statute of limitations in A.R.S. § 12-524 bars a quiet title action even if the recorded deed is forged, but remanded to allow the plaintiff to pursue equitable tolling and discovery-rule arguments. *Estate of Dominguez v. Dominguez*, 146 Ariz. Cases Digest 17 (2025). [§ 5:11]

California. The mere listing of multiple lots in a single deed does not constitute a "division of land" that creates individual parcels under the Subdivision Map Act because a parcel is "created" only when it is conveyed into separate ownership from contiguous property, and because the lot in question had always

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been transferred together with adjoining land and never separately conveyed, it was never legally established as its own parcel and the landowner was not entitled to a certificate of compliance. *Cox v. City of Oakland*, 17 Cal. 5th 362, 328 Cal. Rptr. 3d 875, 562 P.3d 2 (Cal. 2025). [§ 6:20]

North Carolina. The Supreme Court reversed the Court of Appeals and reinstated a permit for an asphalt plant, holding that the developer's application was complete when initially submitted triggering permit choice before a moratorium took effect and upholding the planning board's findings on setbacks, non-commercial structures, and absence of material misrepresentations. *Ashe County v. Ashe County Planning Board*, 387 N.C. 159, 913 S.E.2d 212 (2025). [§ 6:30]

Montana. A motocross course on private property violated a covenant limiting uses to residential purposes and subdivision declarations prohibiting any use that "unreasonably disturb[s]" other landowners and guaranteeing that the subdivision would be preserved "as a choice suburban tract area"; however, the landowner's construction of motocross ramps on his property did not violate covenants. *Larsen v. Sayers*, 2025 MT 24, 420 Mont. 270, 563 P.3d 269 (2025). [§ 7:1]

Montana. A declaration required a 2/3 majority vote of all of the fee simple lot owners, not just the owners who voted, to extend covenants and the vote did not extend the covenants even if it reached the threshold required for modification. *Charlie's Win, LLC v. Gallatin West Ranch Homeowners' Association, Inc.*, 2025 MT 47, 421 Mont. 59, 565 P.3d 299 (2025). [§ 7:1]

North Dakota. A declaration's "no waiver" provision potentially applied to houses built with full metal roofs in violation of restriction and the association's prior approvals of metal roofing without any qualifications did not amount to a waiver of restrictive covenant. *Carpenter v. Southbay Homeowners Association*, 2025 ND 114, 23 N.W.3d 118 (N.D. 2025). [§ 7:1]

Wyoming. The Supreme Court affirmed a permanent injunction barring a winery's commercial production and tastings in a residential subdivision, holding that the operations violated restrictive covenants and that enforcement was not barred by laches. *Schroth, Trustee of Robert E. and Linda M. Schroth Revocable Living Trust dated 8/20/2004 v. Kirk*, 2025 WY 24, 564 P.3d 570 (Wyo. 2025). [§ 7:16]

Texas. A restriction did not prevent developer from building one residence on any sub-five acre tract; and, as a matter of first impression, a factfinder must consider all changes since creation of a deed restriction to determine whether the changed-conditions doctrine precludes enforcement of the restriction; disapproving

Lebo v. Johnson, 349 S.W.2d 744 (Tex. Civ. App. San Antonio 1961), and Oldfield v. City of Houston, 15 S.W.3d 219 (Tex. App. Houston 14th Dist. 2000). EIS Development II, LLC v. Buena Vista Area Association, 715 S.W.3d 689 (Tex. 2025). [§ 7:21]

Sixth Circuit. A developer that was denied a variance for a decommissioned church intended to be converted into a multi-family residential development failed to establish a prima facie case under the FHA that the denial had a disparate impact on members of a protected class or that it was motivated by discriminatory intent and further failed to establish an Equal Protection Clause claim, finding no evidence of selective enforcement or animus, or a Takings Clause Claim concluding that the city's decision did not deprive the property of all economically viable use, and thus no regulatory taking occurred under *Penn Central* factors. Lathfield Investments, LLC v. City of Lathrup Village, 136 F.4th 282 (6th Cir. 2025). [§ 8:4]

Iowa. Uphill landowners did not have any common law right or prescriptive easement to drainage through downhill landowners' property. Robinson v. Central Iowa Power Cooperative, 21 N.W.3d 842 (Iowa 2025), as amended, (Aug. 6, 2025). [§ 9:4]

Maine. A purchase agreement deposit became nonrefundable pursuant to an amendment to such agreement when the purchaser exercised its right to terminate under the condemnation clause and the vendor's failure to inform the purchaser about the condemnation project did not constitute fraud, absent any allegation of active concealment. Alrig USA Acquisitions LLC v. MBD Realty LLC, 2025 ME 11, 331 A.3d 372 (Me. 2025). [§ 13:7]

Seventh Circuit. The Seventh Circuit affirmed a lower court ruling finding that a Borrower's oral assurances that investments would be secured by real and personal property constituted a mortgage under Wisconsin law and thus required a formal written instrument satisfying the statute of frauds upholding a summary judgment on a contract claim while also upholding a separate unjust enrichment award. Charles Bich and Bruno Bich Trust v. WW3 LLC, 130 F.4th 623 (7th Cir. 2025). [§ 13:13]

Eighth Circuit. The Eighth Circuit upheld a denial of an injunction to reinstate a purchase agreement terminated by seller after a purchaser's failure to tender funds and require estoppel certificates because the purchaser had not shown a likelihood of success on the merits, failed to demonstrate irreparable harm, and could not rely on Minnesota's statutory protections to extend the closing deadline, because the procedural stay did not qualify as an injunction under state law. CEZ Prior, LLC v. 755 N Prior Ave. LLC, 126 F.4th 1353 (8th Cir. 2025). [§ 13:27]

Maryland. Vendors who failed to make disclosures concerning deferred water and sewer charges that were required in

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contracts for the sale of new homes in the county were considered “home builders” under the Maryland’s Home Builder Registration Act and their failure to register as home builders meant that they could not rely on the one-year statute of limitations in the Act to assert a defense of untimeliness against failure-to-disclose claims. *SM Landover, LLC v. Sanders*, 489 Md. 614, 330 A.3d 1129 (2025). [§ 13:62]

Maine. The Maine Supreme Judicial Court held that language in a purchase and sale agreement stating the buyer “would like” a right of first refusal was merely precatory and did not create an enforceable contractual right. *Keegan v. Estate of Bradbury*, 2025 ME 13, 331 A.3d 394 (Me. 2025). [§ 14:6]

Maryland Supreme Court. A homebuyer’s claim for statutory damages based on a builder’s noncompliant water and sewer assessment disclosure failed as time-barred because the buyer knew or should have known of the violation when the contract was signed, triggering the limitations period. *Caruso Builder Belle Oak, LLC v. Sullivan*, 489 Md. 346, 330 A.3d 666 (2025). [§ 15:3]

South Carolina. Purchasers did not reasonably rely on any representation by vendor’s real estate agent concerning wood infestation report, and the Residential Property Condition Disclosure Act did not provide for a cause of action against real estate licensees for a violation of the Act. *Isaac v. Onions*, 445 S.C. 525, 915 S.E.2d 492 (2025) [§ 16:13]

Arizona. The Arizona Supreme Court held that appurtenant easements can be part of a larger parcel under A.R.S. § 12-1122(A)(2), allowing severance damages when their condemnation diminishes the value of the remaining property. *State v. Foothills Reserve Master Owners Association, Inc.*, 259 Ariz. 92, 562 P.3d 866 (2025). [§ 18:2]

Virginia. The Court of Appeals affirmed dismissal without prejudice of a condemnation petition, holding that the City failed to meet amended statutory requirements for a 60-year title examination and related disclosures before filing suit. *City of Virginia Beach v. Mathias*, 85 Va. App. 94, 915 S.E.2d 807 (2025). [§ 18:5]

Second Circuit. The Second Circuit held that the taxpayer did not forfeit his claim to surplus on a tax foreclosure, as matter of first impression, *res judicata* did not bar taxpayer’s takings claim, and the Tax Injunction Act and its associated principles of comity did not bar federal courts from considering taxpayer’s takings claim. *Sikorsky v. City of Newburgh*, New York, 136 F.4th 56 (2d Cir. 2025). [§ 18:8]

Sixth Circuit. A developer that was denied a variance for a decommissioned church intended to be converted into a multi-

family residential development failed to establish a prima facie case under the FHA that the denial had a disparate impact on members of a protected class or that it was motivated by discriminatory intent and further failed to establish an Equal Protection Clause claim, finding no evidence of selective enforcement or animus, or a Takings Clause Claim concluding that the city's decision did not deprive the property of all economically viable use, and thus no regulatory taking occurred under *Penn Central* factors. *Lathfield Investments, LLC v. City of Lathrup Village*, 136 F.4th 282 (6th Cir. 2025). [§ 18:8]

Eighth Circuit. The holder of a FERC certificate under the Natural Gas Act (NGA), sought to acquire a pipeline easement in McKenzie County, ND. After negotiating just compensation for the property taken, the only unresolved issue was whether the certificate holder was required to pay the landowners' attorneys' fees available under North Dakota law because the district court applied state law and granted fees. The certificate holder appealed the district court's fee award, arguing that federal law governs when federal eminent-domain power is delegated and that federal law provides no basis for attorney fees. *Held:* The Natural Gas Act delegates federal eminent-domain power but, because it is silent regarding attorney fees, attorney fees are not part of "just compensation." *WBI Energy Transmission, Inc. v. 189.9 rods, more or less, located in Township 149 North, 132 F.4th 1058* (8th Cir. 2025), supreme court application filed. [§ 18:29]

Georgia. A claimant's recorded deed, by itself, was insufficient to establish both the notice and land-possession requirements of adverse possession under color of title. *Brownphil, LLC v. Cudjoe*, 321 Ga. 548, 915 S.E.2d 860 (2025). [§ 19:16]

Fourth Circuit. Routine service charges such as fees for statements of unpaid assessments do not qualify as prohibited transfer fees under North Carolina law distinguishing between legitimate administrative costs and regulated conveyance fees in homeowners association managed property transfers. *Susan K. Carpenter, Trustee for H. Joe King, Jr. Revocable Trust v. William Douglas Management, Inc.; NextLevel Association Solutions, Inc., d/b/a HomeWiseDocs.com*, No. 22-2106, 89 F.4th 374 (4th Cir. 2025). [§ 19:28]

Utah. The Supreme Court affirmed in part and remanded a judgment enforcing a construction lien on condominium units, holding that the contractor's preliminary notices substantially complied with the lien statute and that failure to allocate expenses between units and common areas did not invalidate the lien, but requiring recalculation of the amount owed and

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reconsideration of the excessive lien claim and attorney fees. *New Star General Contractors, Inc. v. Dumar, LLC*, 2025 UT 14, 570 P.3d 339 (Utah 2025). [§ 20:7]

Connecticut. The Connecticut Supreme Court held that taxpayers' filing of replacement actions did not moot a city's appeal from orders reopening judgments of dismissal and that the taxpayers' failure to file appraisals with court within statutory deadline did not divest taxpayers of statutory standing to bring tax appeals, and that the taxpayers' failure to file appraisals with the court within statutory deadline did not divest court of subject matter jurisdiction over the matter. *7 Germantown Road, LLC v. City of Danbury*, 351 Conn. 169, 329 A.3d 927 (2025). [§ 20:23]

Indiana. The Indiana Supreme Court held that contractors cannot assert duplicate mechanic's liens on parcels with different owners for the same work, limited liens to improvements directly benefiting each property, confirmed that lien priority relates back to the start of work, and ruled a lender's mortgage was senior only to the extent loan proceeds satisfied a prior lien, rejecting equitable subrogation. *EdgeRock Development, LLC v. C.H. Garmong & Son, Inc.*, 261 N.E.3d 192 (Ind. 2025). [§ 20:23]

Minnesota. A property owner's challenge to the County's tax assessment failed where the Tax Court reasonably credited the County's appraisal over the owner's less reliable vacancy and income analysis in determining the market value of a medical office building. *Burnsville Medical Building, LLC v. County of Dakota*, 20 N.W.3d 601 (Minn. 2025). [§ 20:23]

Connecticut. The Connecticut Supreme Court held that a municipal tax lien assignee proved the validity of its lien assignments under § 12-195h and was entitled to foreclose when the property owner failed to raise a genuine issue of material fact challenging the assignments. *Cazenovia Creek Funding I, LLC v. White Eagle Society of Brotherly Help, Inc.*, 351 Conn. 722, 333 A.3d 508 (2025). [§ 20:24]

Massachusetts. The Supreme Judicial court affirmed denials of a taxpayer appeal of a tax abatement pursuant to a port authority lease based on the use for air transportation because the section of the enabling act was not considered approved at the point of a state senate vote to override a gubernatorial veto and the enabling act could not be construed to incorporate rules of taxation in the general taxation statute. *480 McClellan LLC v. Board of Assessors of Boston*, 495 Mass. 333, 250 N.E.3d 1131 (2025). [§ 20:28]

South Dakota. Extrinsic evidence concerning the parties' subjective intent was inadmissible to determine whether unambiguous written agreements constituted an absolute sale or

an equitable mortgage and the arrangement was a financing agreement rather than an absolute sale supporting a preliminary injunction. *Sturzenbecher v. Sioux County Ranch, LLC*, 2025 SD 24, 20 N.W.3d 419 (S.D. 2025). [§ 21:4]

Rhode Island. Notice of intent to foreclose was delivered to mortgagor at her “last known address,” in accordance with statutory notice requirements. *Montaquila v. Flagstar Bank, FSB.*, 329 A.3d 490 (R.I. 2025). [§ 21:62]

Arizona. The Arizona Supreme Court held that property owners may quiet title to remove a deed of trust when the statute of limitations on enforcing the underlying debt has expired, even if the debt remains unpaid. *Aroca v. Tang Investment Company LLC*, 145 Ariz. Cases Digest 50 (2025). [§ 21:79]

Eighth Circuit. The Eighth Circuit affirmed, holding that the bank, acting as trustee, did not owe fiduciary duties beyond the express terms of the trust documents and that it had properly followed default and foreclosure procedures emphasizing that contractual provisions governed the relationship and rejecting the borrower’s arguments about implied duties and equitable relief. *Kafi, Incorporated v. Wells Fargo Bank, N.A. as Trustee for ABFC 2006-OPT3 Trust, Asset Backed Funding Corporation Asset-Backed Certificates, Series 2006-OPT3*, 131 F.4th 271 (5th Cir. 2025). [§ 21:80]

Fifth Circuit. The Fifth Circuit affirmed a district court ruling concluding that loan agreements for special-purpose entities intended for land acquisition met the *Howey* investment-contract test for federal securities jurisdiction, that appointment of a receiver under *Netsphere I* was proper, and that the scope of covered entities was appropriately limited supporting a district court asset-freeze injunction. *Securities and Exchange Commission v. Barton*, 135 F.4th 206, Fed. Sec. L. Rep. (CCH) P 102061, 121 Fed. R. Serv. 3d 1051 (5th Cir. 2025). [§ 22:1]