

ALR 6th

Alert

Route to:

- _____
- _____
- _____
- _____
- _____
- _____

From the editor

Hot topics abound in the current and upcoming volumes of A.L.R.6th. Pertaining to the current mortgage crisis, we have [44 A.L.R.6th 225](#), which collects cases discussing the application and construction of state statutes governing the mortgage or foreclosure consultants and purchasers that troubled homeowners turn to for help but who, unfortunately, often times turn out to be scam artists, charging excessive fees, stripping equity, or taking ownership of the home, while [44 A.L.R.6th 1](#) considers the liability of a real estate appraiser to a third party for the negligent or fraudulent appraisal of the value of real property. Noteworthy in the soon to be published [45 A.L.R.6th](#) is an annotation discussing when the use of a taser constitutes a violation of constitutional rights, as well as an annotation considering the liability of prescription drug manufacturers for a prescription drug user's suicide or attempted suicide.

Douglas S. Jurenko, Editor, and Jason B. Binimow, J.D.

Highlights

APPRAISAL

Liability to Third Party for Negligent or Fraudulent Appraisal of Value of Real Property

Under Restatement Second, Torts § 552, a person who supplies false information for the guidance of others may be liable for loss caused by their justifiable reliance on the information if the supplier of information fails to exercise reasonable care or competence in obtaining or communicating the information. The courts have applied this principle to real estate appraisers. This annotation collects and analyzes the state and federal cases in which the courts have considered the liability of a real estate appraiser for negligence or fraud in appraising the value of real property to a third party with whom the appraiser did not have a contractual relationship. [44 A.L.R.6th 1](#)



FORECLOSURE

Construction and Application of State Statutes Governing Mortgage or Foreclosure Consultants and Purchasers

Homeowners who have overextended themselves financially and thus are faced with the prospect of losing their home to the lender are vulnerable and may feel willing to take any shred of assistance or relief available. Private mortgage or foreclosure consultants often seek out just these persons and offer them what seems to be a way of staving off economic disaster. However, what the frequently unsophisticated homeowner doesn't realize is that such consultants all too often are the masterminds behind a scheme to separate the homeowner not only from ownership of the property but also from whatever equity that was present in the

property. This is usually accomplished through a bewildering blizzard of transactions, using bogus purchasers, unrealistic refinancing of leasebacks for the homeowner, and the like, with huge and unnecessary fees being siphoned off to the consultant and related companies, and foreclosure being the inevitable last step. A number of states have enacted statutes to restrain the activities of these consultants as well as the activities of purchasers themselves. Courts have reached a variety of conclusions as to the construction and application of foreclosure consultant and purchaser statutes, as this annotation illustrates. [44 A.L.R.6th 225](#)

EXEMPTIONS AND EXCLUSIONS

Jewelry and Clothing as Within Debtor's Exemptions Under State Statutes

Numerous state statutes have provided that certain basic property of the debtor should be exempt from execution for debt. The theory behind these statutes is that the debtor should be given a fresh chance to succeed, and that it would be too hard for the debtor to recover financially if he or she is rendered completely penniless and must struggle merely to survive. On the other hand, it is unfair to the creditor not to receive payment while the debtor is permitted to retain expensive assets, so the exemption statutes are often limited in scope and

amount. Accordingly, while many exemption statutes allow clothing or jewelry to be exempt, there are often restrictions on total value of the items or that such goods must be "necessary." Cases have reached a variety of conclusions as to the propriety of particular claims for clothing and jewelry, as the following annotation illustrates. [44 A.L.R.6th 481](#)

VICTIMS

Measure and Elements of Restitution to Which Victim is Entitled Under State Criminal Statute—Payment for Installation of Alarm or Locks or Change of Locks Due to Burglary, Attempted Burglary, or Felonious Breaking and Entering

Courts must on occasion decide whether costs incurred by a victim in increasing security following a burglary or similar crime is compensable under state restitution statutes which describe only in general terms the types of loss covered. This annotation collects all cases which have considered whether, in the aftermath of a burglary, attempted burglary, or felonious breaking and entering, the costs of installing a burglar alarm or additional locks or changing locks was compensable under state restitution statutes, and if so the proper measure. [44 A.L.R.6th 301](#)

Coming Soon

Listed below are a few of the topics scheduled to be published in [45 A.L.R.6th](#) in July 2009. Some of the annotations listed may be rescheduled.



FRIVOLOUS ACTIONS

Validity, Construction and Application of State Vexatious Litigant Statutes

A state vexatious litigant statute permits restrictions on access to the courts by a litigant judicially determined to be vexatious, at least when the litigant is proceeding pro se. The purpose of such a statute is to prevent abuse of the judicial system by those persons who persistently and habitually file lawsuits without reasonable grounds, or who otherwise engage in frivolous conduct in the courts. These statutes have been consistently upheld by the courts. This annotation will collect and analyze the federal and state cases discussing the validity, construction and application of state vexatious litigant statutes. [45 A.L.R.6th](#)

POLICE AND LAW ENFORCEMENT OFFICERS

When Does Use of Taser Constitute Violation of Constitutional Rights

A police officer is often constrained by circumstances to use an appropriate degree of force on a suspect in order to enforce orders and commands, and in order to protect the general public, other officers and emergency personnel, and the suspect himself. A wide variety of methods of force are available and are used by most police departments. These options range from holding, pushing, or lightly striking a suspect, to the use of pepper or chemical sprays and the like, and to hitting with batons, and they culminate with the deadly force of firearms. An increasingly popular option in the mid-range of force is the use of stun guns, known as "tasers." The electric discharge of a taser is extremely painful and overrides the body's nervous system, usually causing a suspect to fall down or otherwise cease resistance long enough for the officers to handcuff the suspect or otherwise regain control. Moreover, since the discharge can be from a short distance away from a suspect, there is less of a need to get close to employ direct physical force, thus preventing more serious injuries both to the suspect and to the officers. However, police are frequently

accused of misusing or overusing tasers where much less force was all that was necessary, or of using it on sick or otherwise sensitive individuals. Courts have reached a variety of conclusions as to the constitutionality of particular incidents involving the use of tasers, as this annotation will illustrate. **45 A.L.R.6th**

SEARCH AND SEIZURE

Validity of Search and Reasonable Expectation of Privacy as Affected by No Trespassing or Similar Signage

The Fourth Amendment and analogous state constitutional provisions are widely held to protect the “reasonable expectations of privacy” of those legitimately occupying a certain space, relative to searches and seizures of law enforcement personnel. This annotation will collect and discuss state and federal cases in which the courts considered the validity of a search or seizure as against a claim of violation of reasonable expectation of privacy based in whole or in part on the presence of a

“no trespassing” or similar sign at or near the property searched. **45 A.L.R.6th**

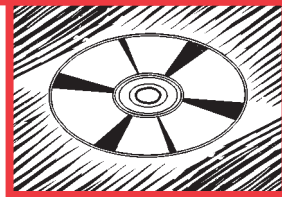
SUICIDE

Liability of Prescription Drug Manufacturer for Drug User’s Suicide or Attempted Suicide

A number of studies have suggested that taking certain prescription drugs as prescribed increases the risk of suicide of the patient taking the drug. Introduction of new drugs to the marketplace, as well as labeling of such drugs, is regulated by the Federal Food, Drug and Cosmetic Act, 21 U.S.C.A. §§ 301 et seq. (“FDCA”), and, potentially, by state statutory and common law making it theoretically possible for a manufacturer of such a drug to be held liable in damages for such a patient’s suicide. This annotation will collect and discuss state and federal cases in which the courts considered the liability of a prescription drug manufacturer for suicide or attempted suicide allegedly caused by a drug manufactured by such manufacturer. **45 A.L.R.6th**

Index

The following is a complete list arranged alphabetically by topic, of annotations contained in the current volume **44 A.L.R.6th** or scheduled for publication in **45 A.L.R.6th**. Some of the annotations listed may be rescheduled.



ANIMALS

Construction and Application of State Endangered Species Acts, **44 A.L.R.6th 325**

Propriety, Measure, and Elements of Restitution to Which Victim is Entitled Under State Criminal Statute—Cruelty to, Killing, or Abandonment of, Animals, **45 A.L.R.6th**

ATTORNEY AND CLIENT

Reciprocal Discipline of Attorneys—Noncriminal Misconduct Towards Clients Not Involving Client Funds, **44 A.L.R.6th 75**

Reciprocal Discipline of Attorneys—Commingling or Other Mishandling of Client Funds, **45 A.L.R.6th**

BANKRUPTCY AND INSOLVENCY

Jewelry and Clothing as Within Debtor’s Exemptions Under State Statutes, **44 A.L.R.6th 481**

BURGLARY

Measure and Elements of Restitution to Which Victim is Entitled Under State Criminal Statute—Payment for Installation of Alarm or Locks or Change of Locks Due to Burglary, Attempted Burglary, or Felonious Breaking and Entering, **44 A.L.R.6th 301**

CUSTODIAL INTERROGATION

What Constitutes “Custodial Interrogation” by Police Officer Within Rule of *Miranda v. Arizona* Requiring that Suspect Be Informed of Federal Constitutional Rights

Before Custodial Interrogation—Upon Hotel Property, **45 A.L.R.6th**

EMINENT DOMAIN

Validity of Extraterritorial Condemnation by Municipality, **44 A.L.R.6th 259**

ENDANGERED SPECIES

Construction and Application of State Endangered Species Acts, **44 A.L.R.6th 325**

EXEMPTIONS

Jewelry and Clothing as Within Debtor’s Exemptions Under State Statutes, **44 A.L.R.6th 481**

FORECLOSURE

Construction and Application of State Statutes Governing Mortgage or Foreclosure Consultants and Purchasers, **44 A.L.R.6th 225**

FRAUD

Liability to Third Party for Negligent or Fraudulent Appraisal of Value of Real Property, **44 A.L.R.6th 1**

FRIVOLOUS ACTIONS

Validity, Construction, and Application of State Vexatious Litigant Statutes, **45 A.L.R.6th**

LABOR AND EMPLOYMENT

Exclusive Remedy Provision of State Workers’ Compensation Statute as Applied to Injuries Sustained During or as the Result of Horseplay, Joking, Fooling, or the Like, **44 A.L.R.6th 545**

MALPRACTICE BY ATTORNEY

Reciprocal Discipline of Attorneys—Noncriminal Misconduct Towards Clients Not Involving Client Funds, **44 A.L.R.6th 75**

Reciprocal Discipline of Attorneys—Commingling or Other Mishandling of Client Funds, **45 A.L.R.6th**

MEDICAL MALPRACTICE

Physician's Liability for Patient's Addiction to or Overdose from Prescription Drugs, **44 A.L.R.6th 391**

MIRANDA WARNINGS

What Constitutes "Custodial Interrogation" by Police Officer Within Rule of Miranda v. Arizona Requiring that Suspect Be Informed of Federal Constitutional Rights Before Custodial Interrogation—Upon Hotel Property, **45 A.L.R.6th**

MORTGAGES

Construction and Application of State Statutes Governing Mortgage or Foreclosure Consultants and Purchasers, **44 A.L.R.6th 225**

OPPRESSION AND VEXATION

Validity, Construction, and Application of State Vexatious Litigant Statutes, **45 A.L.R.6th**

POLICE AND LAW ENFORCEMENT OFFICERS

When Does Use of Taser Constitute Violation of Constitutional Rights, **45 A.L.R.6th**

PRESCRIPTION DRUGS

Liability of Prescription Drug Manufacturer for Drug User's Suicide or Attempted Suicide, **45 A.L.R.6th**

REAL PROPERTY

Liability to Third Party for Negligent or Fraudulent Appraisal of Value of Real Property, **44 A.L.R.6th 1**

RESTITUTION TO CRIME VICTIMS

Propriety, Measure, and Elements of Restitution to Which Victim is Entitled Under State Criminal Statute—

Cruelty to, Killing, or Abandonment of, Animals, **45 A.L.R.6th**

SALE OR RETURN

"Sale on Approval" and "Sale or Return" Contracts Under Uniform Commercial Code §2-326, **44 A.L.R.6th 441**

SEARCH AND SEIZURE

When Does Use of Taser Constitute Violation of Constitutional Rights, **45 A.L.R.6th**

Validity of Search and Reasonable Expectation of Privacy as Affected by No Trespassing or Similar Signage, **45 A.L.R.6th**

SUICIDE

Liability of Prescription Drug Manufacturer for Drug User's Suicide or Attempted Suicide, **45 A.L.R.6th**

TASER

When Does Use of Taser Constitute Violation of Constitutional Rights, **45 A.L.R.6th**

TRESPASS

Validity of Search and Reasonable Expectation of Privacy as Affected by No Trespassing or Similar Signage, **45 A.L.R.6th**

WORKERS' COMPENSATION

Exclusive Remedy Provision of State Workers' Compensation Statute as Applied to Injuries Sustained During or as the Result of Horseplay, Joking, Fooling, or the Like, **44 A.L.R.6th 545**

WRONGFUL DEATH ACTIONS

Liability of Prescription Drug Manufacturer for Drug User's Suicide or Attempted Suicide, **45 A.L.R.6th**

Have questions or need help? Please call customer support at 1-800-225-7488, or e-mail at ALRLCS-Rochester@thomson.com.

WEST®

This publication was created to provide you with accurate and authoritative information concerning the subject matter covered; however, this publication was not necessarily prepared by persons licensed to practice law in a particular jurisdiction. The publisher is not engaged in rendering legal or other professional advice and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional.