

Real Property & Title Insurance Update: Week Ending August 11, 2017

August 16, 2017

REAL PROPERTY UPDATE

- **Foreclosure/Short Sale/Statute of Limitations:** Florida Statute section 95.11(5)(h)'s one year statute of limitations period does not apply to bar Bank's cause of action for deficiency judgment arising out of a short sale - [Whitney Bank v. Grant](#), No. 1D16-5112 (Fla. 1st DCA Aug. 7, 2017) (reversed and remanded).
- **Foreclosure/Standing:** Clerk of Court is not a bailee of a negotiable instrument where Bank did not properly assign promissory note - [Partridge v. Nationstar Mortgage, LLC](#), No. 2D16-3081 (Fla. 2d DCA Aug. 11, 2017) (reversed).
- **Foreclosure/Fraud Claim:** fraud claim based on generalized allegations of fraud in mortgage industry, without specific allegations of fraud in subject case, was not a valid basis under Rule 1.540 to relieve defendant from a Consent Final Judgment or Settlement and Release Agreement - [The Bank of New York Mellon v. Simpson](#), No. 3D16-2445 (Fla. 3d DCA Aug. 9, 2017) (reversed and remanded).
- **Foreclosure/Tortious Interference:** bank's process server's alleged comments to tenants at the subject property did not fall within absolute litigation privilege because they were unnecessary to effectuate service of process - [Pace v. Bank of New York Mellon Trust Company National Association](#), No. 5D16-748 (Fla. 5th DCA Aug. 11, 2017) (reversed and remanded).

CONSUMER FINANCE UPDATE

- **TCPA/Revocation of Consent:** Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., allows partial revocation of consent to receive automated calls from creditor - [Schweitzer v. Comenity Bank](#), No. 16-10498 (11th Cir. Aug. 10, 2017) (reversing summary judgment).

TITLE INSURANCE UPDATE

- **Class action:** declining to recognize an insurance-examination privilege and holding that Conn. statute which makes documents provided to department of insurance in connection with market conduct examination confidential and not subject to subpoena, does create a privilege or prohibition against disclosure by discovery of the documents and the confidentiality created by the statute is limited to the department of insurance in course of the market conduct examination - [Mahon v. Chicago Title Ins., Co.](#), Case No. 3:09CV00690 (D. Conn. Aug., 4, 2017)(granting motion to compel and denying motion for protective order)

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