

Real Property & Title Insurance Update: Week Ending September 1, 2017

September 05, 2017

REAL PROPERTY UPDATE

- **Foreclosure / Statute of Limitations:** trial court improperly found that, because payments due under a note and mortgage were accelerated in a prior 2009 action, the second action filed over five years later was barred by the statute of limitations – [The Bank of New York Mellon Corp. as Trustee, v. Anton](#), No. 3D15-2213 (Fla. 3d DCA August 30, 2017) (reversing summary judgment order and remanding)
- **Insurance Policy:** material issues of fact existed regarding (1) whether insurer complied with policy and section 627.7011 by paying at least the actual cash value of the cost of repairs, and (2) whether the insureds breached the policy by failing to comply with the policy's post-loss obligation to allow reasonable inspections – [Siegel v. Tower Hill Signature Ins. Co.](#), No. 3D16-1861 (Fla. 3d DCA Aug. 30, 2017) (reversing final summary judgment in insurer's favor and remanding)
- **Lis Pendens/Bond:** trial court did not depart from essential requirements of law by requiring that a \$3,000,000 bond be posted by a date certain or the lis pendens would be discharged – [Ortiz v. Weiss](#), No. 3D17-420 (Fla. 3d DCA Aug. 30, 2017) (denying petition)
- **Foreclosure/Banking Statute of Frauds:** alleged oral modification of credit agreement was precluded by both the statute of frauds and the Banking Statute of Frauds – [Wells Fargo Bank, N.A. v. Richards](#), Nos. 4D16-1364 & 4D16-2033 (Fla. 4th DCA Aug. 30, 2017) (reversed and remanded)

- **Foreclosure/Standing:** appellant, which received title to property by quitclaim deed prior to commencement of foreclosure proceeding, should have been allowed to contest appellee's standing to bring foreclosure proceeding – [3709 N. Flagler Drive Prodigy Land Trust, Mango Homes LLC, as Trustee v. Bank of America, N.A.](#), Nos. 4D16-3255 (Fla. 4th DCA Aug. 30, 2017) (reversed and remanded)
- **Insurance/Sinkhole:** affirming trial court's stay of execution of final judgment until insured provided insurer with signed contract for completion of subsurface repairs to home damaged by sinkhole activity, but finding that insurer waived its option under policy to tender policy limits in lieu of paying in excess of those limits to complete said repairs – [Ringelman v. Citizens Prop. Ins. Corp.](#), No. 5D16-260 (Fla. 5th DCA Sept. 1, 2017) (affirmed)
- **Foreclosure/Statute of Limitations:** notwithstanding dismissal of first foreclosure action on note and mortgage, mortgagee's claims for defaults occurring within five years of filing of second foreclosure action were not barred by statute of limitations – [U.S. Bank, N.A., as Successor Trustee v. Diamond](#), No. 5D16-3609 (Fla. 5th DCA Sept. 1, 2017) (reversed and remanded with instructions)

TITLE INSURANCE UPDATE

- **Indemnity:** insurer entitled to recover for loss of title to insured purchaser's property against sellers pursuant to agreement to indemnify and representation that sellers were not aware of any dispute or claims concerning the property but where they in fact had such knowledge through their attorney – [First American Title Ins. Co. v. Howell](#), Case No. 2016-CA-1293 (La. App. Aug. 30, 2017) (affirming final judgment after trial)
- **Recoupment:** title insurer excused from paying balance of settlement where plaintiff interfered with the parties' contract to recover pursuant to an indemnity agreement – [Soundbuilt Northwest, LLC v. Commonwealth Land Title Ins. Co.](#), Case Nos. 74128-4-I & 75994-9-I (App. Wash. Aug. 28, 2017) (affirming final judgment after trial)

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