

Real Property, Financial Services & Title Insurance Update: Week Ending January 22, 2016

January 26, 2016

REAL PROPERTY UPDATE

- **Foreclosure/Condition Precedent:** providing a notice of the assignment of mortgage loan, as required by section 559.715, Florida Statutes, is not a condition precedent to filing a mortgage foreclosure suit. Question certified: Is the provision of written notice of assignment under section 559.715 a condition precedent to the institution of a foreclosure lawsuit by the holder of the note. [Brindise v. U.S. Bank National Association, as Trustee, for the Benefit of Harborview 2005-3 Trust Fund, et al.](#) No. 2D14-3316 (Fla. 2d DCA January 20, 2016) (affirmed; question certified)
- **Foreclosure/Condition Precedent:** substantial compliance, not strict compliance, is required and default notice was in substantial compliance with provisions of mortgage - [Bank of America v. Cadet](#), No. 3D15-669 (Fla. 3rd DCA January 20, 2016) (reversed and remanded).
- **Foreclosure/Standing:** plaintiff failed to provide evidence establishing its standing at the inception of the suit; note with undated endorsement filed after the complaint was filed was insufficient - [Ha, et al. v. BAC Home Loans Servicing L.P. f/k/a Countrywide Home Loans Servicing, L.P.](#), No. 3D15-669 (Fla. 4th DCA January 20, 2016) (reversed).
- **Foreclosure/Default:** court erred in denying the borrower's motions to vacate the clerk's default where the borrower had filed papers before the clerk entered the default - [Stuart-Findlay v. Bank of America, National Association, et. al.](#), No. 4D14-683 (Fla. 4th DCA January 20, 2016) (reversed and remanded).
- **Foreclosure/Deficiency:** trial court erred in failing to consider the original notes and mortgages, which had been submitted and considered by the trial court in connection with the earlier final judgment of foreclosure, when determining liability for deficiency judgment - [SVI Capital, LLC v. Coon, et. al.](#), No. 4D14-1685 (Fla. 4th DCA January 20, 2016) (reversed and remanded).

- **Foreclosure/Notice of Default/Hearsay:** trial court abused discretion by allowing testimony regarding a business record not in evidence to establish that Plaintiff complied with mortgage's pre-foreclosure notice requirements - [Helton v. Bank of America, N.A.](#), No. 5D14-2632 (Fla. 5th DCA January 22, 2016) (reversed and remanded).

TITLE INSURANCE UPDATE

- **Title Agent:** a title agent and its principal owe no duty the title agent's employee to maintain an errors and omissions policy for the employee's benefit – [Fidelity National Title Ins. Co. v. Craven](#), Case No. 12-4306 (E.D. Pen. Jan. 19, 2016) (memorandum granting motion for summary judgment)

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