

Real Property & Title Insurance Update: Week Ending May 3, 2019

May 03, 2019

Real Property Update

- **Restrictive Covenants:** trial court erred by failing to provide injunctive relief in favor of homeowner as it related to trees planted in common area in violation of restrictive covenants - [McIntosh v. Myers](#), No. 1D17-3472 (Fla. 1st DCA May 2, 2019) (reversed and remanded)
- **Taxation / Ad Valorem / Exemptions:** Gainesville Chamber of Commerce is exempt from ad valorem taxation as their activities qualify as "charitable purposes" as the Florida Legislature has defined that term in section 196.012(7) - [Crapo v. Gainesville Area Chamber of Commerce, Inc.](#), No. 1D17-0452 (Fla. 1st DCA May 2, 2019) (affirmed)
- **Taxation / Ad Valorem / Immunity:** county's immunity from taxation does not extend extraterritorially to property it owns in another county - [Joiner v. Pinellas Cnty., Fla.](#), No. 2D17-1040 (Fla. 2d DCA May 3, 2019) (reversed and remanded)
- **Foreclosure / Paragraph 22:** plaintiff not required to send a new default notice before filing second foreclosure action based on same default, where borrower never cured said default - [HSBC Bank USA, N.A., as Trustee v. Leone](#), No. 2D17-2851 (Fla. 2d DCA May 3, 2019) (reversed and remanded)
- **Foreclosure / Guaranty / Deficiency:** plaintiff cannot assert claim against guarantors based on Guaranty of Completion where claim was not raised in pleadings (claim in pleadings related to Guaranty Agreement, as opposed to Guaranty of Completion). [D'Agostino v. CCP Ponce, LLC](#), No. 3D18-568 (Fla. 3rd DCA May 1, 2019) (affirmed in part; reversed in part and remanded)

Title Insurance Update

- **Recoupment:** title insurer and its insured developer are unsophisticated as to land surveying and discovery rule should apply to determine whether their claims are barred by the statute of limitations - [Commonwealth Land Title Ins. Co. v. KCI Tech., Inc.](#), No. 18-7051 (D.C. Cir. April 26, 2019) (opinion reversing dismissal orders and remanding)
- **RESPA:** one-year statute of limitations is not jurisdictional and may be tolled on equitable grounds as to claims lenders paid "unearned fees and kickbacks" to title insurance agents - [Edmondson v. Eagle Nat'l Bank](#), Nos. 18-1216, 18-1229, 18-1230, 18-1260, 18-1262 (4th Cir. April 26, 2019) (opinion reversing dismissal)

Related Practices

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