

Real Property & Title Insurance Update: Week Ending July 22, 2016

July 25, 2016

REAL PROPERTY UPDATE

- **Lis Pendens:** a party seeking to maintain a lis pendens must establish a “fair nexus” between the party’s claim and the subject property by making “a minimal showing that there is at least some basis for the underlying claim [a]nd ... show[ing] he or she has a good faith basis to allege facts supporting a claim and that the facts alleged would at least state a viable claim” - [Regents Park Investments, LLC v Bankers Lending Services, Inc.](#), Case No. 3D16-529 (Fla. 3d DCA July 20, 2016) (reversed and remanded with instruction to reinstate lis pendens).
- **Foreclosure:** Section 559.715, Fla. Stat., which requires assignee of right to collect debt to provide notice to debtor “at least 30 days before any action to collect the debt” does not apply to “holder” of note secured by mortgage on real property and is not an affirmative defense to foreclosure because (i) it is not a condition precedent and (ii) does not avoid the claims to foreclose a mortgage and enforce a note - [Deutsche Bank National Trust Co., as Trustee for Morgan Stanley Home Equity Loan Trust 2007-1 v Hagstrom](#), Case No. 2D14-5254 (Fla. 2d DCA July 20, 2016) (reversed and remanded).

TITLE INSURANCE UPDATE

- **CPL/Limitation on Liability:** title insurer not entitled to summary judgment on liability simply because transaction did not involve sham transaction, forgery, straw buyer or fraud and dishonesty of closing agent - [Regions Bank v. Commonwealth Land Title Ins. Co.](#), Case No. 14-CV-01625 (N.D. Ala. Jul. 14, 2016) (Memorandum Opinion and Order)
- **CPL/Limitation on Liability:** title insurer could not avoid liability under a CPL on grounds that closing agent was not required to determine whether or not mortgage could be recorded as instructed - [Regions Bank v. Commonwealth Land Title Ins. Co.](#), Case No. 14-CV-01625 (N.D. Ala. Jul. 14, 2016) (Memorandum Opinion and Order)

- **CPL/Limitation on Damages:** lender's potential recovery was not limited to terms of title policy for determination of damages simply because CPL language states that liability thereunder is coextensive with liability under title policy - [Regions Bank v. Commonwealth Land Title Ins. Co.](#), Case No. 14-CV-01625 (N.D. Ala. Jul. 14, 2016) (Memorandum Opinion and Order).
- **CPL/Actual Loss:** issue of fact precluded summary judgment in favor of insurer because lender's loss was not limited to amount related to loss of first lien position but could also include outstanding loan balance less the sales proceeds of the collateral property - [Regions Bank v. Commonwealth Land Title Ins. Co.](#), Case No. 14-CV-01625 (N.D. Ala. Jul. 14, 2016) (Memorandum Opinion and Order)
- **Duty/Escrow Agent:** title insurer's duties when acting as an escrow agent is defined by escrow actions and title insurer could not be liable for breach of duty when it complies escrow instructions - [Proterra Development Ventures LLC v. First American Title Ins. Co.](#), Case No. 47567-7-II (Wash. Ct. App. Jul. 12, 2016)(Unpublished Opinion)
- **Duty /Title Insurer:** client in preparing commitment for title insurance - [Centurion Props. III, LLC v. Chicago Title Ins. Co.](#), Case No. 91932-1 (Wash. Jul. 14, 2016)(en banc) (Answering Certified Question from Ninth Circuit Court of Appeals)
- **Duty /Title Insurer:** no duty owed by title insurer to non-client third parties when recording legal instruments particularly when legal instrument is facially valid - [Centurion Props. III, LLC v. Chicago Title Ins. Co.](#), Case No. 91932-1 (Wash. Jul. 14, 2016)(en banc) (Answering Certified Question from Ninth Circuit Court of Appeals)
- **Duty/Title Insurer:** justice does not require title insurance companies to look behind signatures on document and to police parties' agreements - [Centurion Props. III, LLC v. Chicago Title Ins. Co.](#), Case No. 91932-1 (Wash. Jul. 14, 2016)(en banc) (Answering Certified Question from Ninth Circuit Court of Appeals)
- **Negligent Recording:** state's title insurance and recording statutes did not impose liability for negligent recording of title instruments on title insurer - [Centurion Props. III, LLC v. Chicago Title Ins. Co.](#), Case No. 91932-1 (Wash. Jul. 14, 2016)(en banc) (Answering Certified Question from Ninth Circuit Court of Appeals)

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