

Real Property & Title Insurance Update: Week Ending January 20, 2017

January 25, 2017

REAL PROPERTY UPDATE

- **Foreclosure/Vacating Judgment:** estate failed to either allege or prove any basis under Rule 1.540 to vacate final judgment of foreclosure to which it had consented – [The Bank of N.Y. Mellon v. Estate of Peterson](#), No. 2D16-2405 (Fla. 2d DCA Jan. 18, 2017) (reversing and remanding for reinstatement of final judgment).
- **Foreclosure/Claim for Surplus Funds:** sec. 45.031, Fla. Stat. requires that any person claiming a right to surplus funds file a claim with the clerk no later than sixty days after the foreclosure sale itself, not within sixty days of the certificate of sale, and, therefore, bank's claim for surplus funds untimely – [The Bank of N.Y. Mellon, as Trustee v. Glenville](#), No. 2D15-5198 (Fla. 2d DCA Jan. 20, 2017) (affirmed)
- **Foreclosure/Vacating Judgment:** trial court lacked jurisdiction to entertain borrower's motion to vacate foreclosure judgment, which asserted lender's counsel committed fraud on court in representing that borrower and her counsel were not present in the court room for trial when their case was called, because borrower's motion was filed over a year after entry of judgment and, therefore, was untimely under rule 1.540(b)(3) – [Romero v. Wells Fargo Bank, N.A., as Trustee](#), No. 2D15-5270 (Fla. 2d DCA Jan. 20, 2017) (vacating and remanding with instructions)
- **MRTA/Attorneys' Fees:** court properly awarded attorneys' fees under sec. 712.08, Fla. Stat., providing for costs, fees, and damages where any person has filed a false preservation notice under MRTA, where HOA had no authority to file preservation notice, regardless of HOA's lack of intent to file false claim – [Sand Lake Hills Homeowners Ass'n, Inc. v. Busch](#), No. 5D16-21 (Fla. 5th DCA Jan. 20, 2017) (affirming in part, reversing in part, and remanding)

TITLE INSURANCE UPDATE

- No Updates This Week

Related Practices

[Real Property Litigation](#)

[Title Insurance](#)

[Consumer Finance](#)

©2025 Carlton Fields, P.A. Carlton Fields practices law in California through Carlton Fields, LLP. Carlton Fields publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.