

Real Property, Financial Services & Title Insurance Update: Week Ending March 7, 2016

March 08, 2016

REAL PROPERTY UPDATE

- **Foreclosure/Reverse Mortgage:** lender not entitled to accelerate debt on reverse mortgage after death of borrower where surviving spouse not designated a borrower on note, but designated a borrower on mortgage – [Edwards v. Reverse Mortgage Sols., Inc.](#), Case No. 3D14-2631 (Fla. 3d DCA Mar. 2, 2016) (reversing final judgment of foreclosure)
- **Foreclosure Sale:** borrower entitled to vacate foreclosure sale where sale conducted while timely motion for rehearing pending – [Prieto v. Fed. Nat'l Mortgage Ass'n.](#), Case No. 3D15-1518 (Fla. 3d DCA Mar. 2, 2016) (reversed and remanded)
- **Foreclosure/Standing:** promissory note that merely referred to mortgage but did not incorporate its terms was negotiable; thus, assignee of note had standing to foreclose – [Onewest Bank, FSB v. Nunez](#), Case Nos. 4D13-4817 (Fla. 4th DCA Mar. 2, 2016) (reversed dismissal)
- **Foreclosure/Unpled Defenses:** involuntary dismissal of foreclosure action improper where borrower did not plead release by settlement agreement as affirmative defense and bank not afforded opportunity to be heard on issue – [Wells Fargo Bank, N.A. v. Gonzalez](#), Case Nos. 4D14-145 (Fla. 4th DCA Mar. 2, 2016) (reversed and remanded)
- **Foreclosure/Conditions Precedent:** lender not entitled to final judgment of foreclosure where it did not send borrower proper notice of intent to accelerate as required by mortgage prior to bringing suit – [Miller v. The Bank of New York Mellon](#), Case No. 4D15-36 (Fla. 4th DCA Mar. 2, 2016) (reversed)

TITLE INSURANCE UPDATE

- **Coverage:** title insurance policy insured there were no senior claims at the time of purchase, not that title would forever remain with the purchaser, and purchaser's claims that her insurer did not provide coverage for a subsequent foreclosure sale due to her race or gender did not transform the denial of the baseless claim into discriminatory practice – [Sewell v. Fidelity National Financial](#), Case No. PWG-15-3077, 3392 (D. Md. Feb. 24, 2016) (memorandum opinion and order denying motion for reconsideration)
- **Duty to Defend:** insurer had duty to defend insured foreclosure sale purchaser from foreclosed borrower's counts alleging (i) the foreclosure sale was invalid, (ii) the insured conspired with the lender in keeping sale price low, (iii) lender failed to follow procedures in sale to insured, and (iv) insured's deed was invalid because all four counts were intimately intertwined with whether insured had good title – [Andromeda Real Estate Partners, LLC v. Commonwealth Land Title Ins. Co.](#), Case No. 15-224 (D. R.I. Feb. 19, 2016) (granting motion for summary judgment)
- **Duty to Defend:** where certain counts if proven could trigger a policy exclusion and insurer takes that position, the insure was obligated to allow insured to select its own counsel to defend the action and pay that counsel's fees pursuant to the policy – [Andromeda Real Estate Partners, LLC v. Commonwealth Land Title Ins. Co.](#), Case No. 15-224 (D. R.I. Feb. 19, 2016) (granting motion for summary judgment)

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