

# Real Property, Financial Services & Title Insurance Update: Week Ending January 15, 2016 (and bonus opinion from January 20)

January 22, 2016

## REAL PROPERTY UPDATE

- **Amendment to Foreclosure Rules and Forms:** Florida Supreme Court amended Florida Rule of Civil Procedure 1.115 and Forms 1.944 and 1.996 to conform with § 702.015, Fla. Stat. (2015) and “expedite the foreclosure process by ensuring initial disclosure of a plaintiff’s status and the facts supporting that status, thereby ensuring the availability of documents necessary to the prosecution of the case” – [In re Amendments to the Florida Rules of Civil Procedure](#), No. SC13-2384 (Fla. Jan. 14, 2016).
- **Foreclosure:** defense of failure to comply with notice requirement in Fla. Stat. § 559.715 must be pled with specificity – [Deutsche Bank National Trust Co., as Trustee for New Century Home Equity Loan Trust 2005-2 v. Quinion](#), No. 2D14-1560 (Fla. 2d DCA Jan. 15, 2016) (reversing and remanding dismissal of foreclosure action).
- **Foreclosure:** written notice of assignment of mortgage loan is not required pursuant to § 559.715 and that section does not create a condition precedent to mortgage foreclosure action – [Brindise v. U.S. Bank Nat’l Ass’n](#), No. 2D14-3316 (Jan. 20, 2016) (affirming final judgment of foreclosure and certifying question to Florida Supreme Court).
- **Marketable Record Title Act (MRTA):** MRTA does not extinguish restrictive covenants imposed by government as condition for approving project on land because such restriction is considered a zoning regulation and does not affect marketability of title – [Save Calusa Trust v St. Andrews Holdings, Ltd.](#), Nos. 3D14-2682 & 3D14-2690 (Fla. 3d DCA Jan. 13, 2016) (reversed and remanded).

## TITLE INSURANCE UPDATE

- **Nondischargeability:** title insurer's motion for summary judgment seeking determination that debt based on defendant's false representations is nondischargeable must show reliance on defendant's representations – [In re Koosyial](#), No. 14-10382 (Bky. E.D. Tex. Jan. 8, 2016) (order denying motion for summary judgment).
- **SLAPP:** title insurer's quiet title action is subject to litigation privilege and thus the allegations of slander of title, damages for violation of plat, negligence and intentional infliction of emotional distress arising from that quiet title action were properly stricken under anti-SLAPP statute – [Regan v. First American Title Ins. Co.](#), No. D066552 (Cal. App. Jan. 1, 2016) (affirming order granting special motion to strike).

## Related Practices

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