

# Real Property & Title Insurance Update: Week Ending July 29, 2016

August 01, 2016

## REAL PROPERTY UPDATE

- **Foreclosure/Automatic Stay:** because final judgment entered day after defendant's petition for bankruptcy, automatic stay imposed by 11 U.S.C. § 362 was in effect and, thus, judgment was void, even though trial court did not have notice of stay – [CitiBank, N.A., as Trustee v. Unknown Heirs](#), No. 1D15-2502 (Fla. 1st DCA July 25, 2016) (reversed and remanded)
- **Foreclosure/Notice of Default:** default notice substantially complied with mortgage's notice requirements in paragraph 22 – [The Bank of New York Mellon, as Trustee v. Bloedel](#), No. 2D15-1862 (Fla. 2d DCA July 27, 2016) (reversed and remanded)
- **Foreclosure/Statute of Limitations:** because bank's complaint alleged borrower failed to make payments in April 2008 and all subsequent payments, and bank's action filed within five years of alleged default payment, action survived statute of limitations defense – [Dhanasar v. JPMorgan Chase Bank, N.A.](#), No. 3D15-10 (Fla. 3d DCA July 27, 2016) (affirming order)
- **Foreclosure/Striking Pleadings:** trial court abused discretion by striking borrower's pleadings and entering default final judgment as sanction because no competent substantial evidence to support determination (1) that borrower lied and committed perjury on a central issue, or (2) that misconduct was undertaken with intent to deceive, constituted a deliberate scheme, or amounted to fraud upon the court – [Martinez v. The Bank of New York Mellon, etc.](#), No. 3D15-2350 (Fla. 3d DCA July 27, 2016) (reversed and remanded)
- **Foreclosure/Damages:** lender failed to prove the amounts owed in final judgment, where payment history introduced at trial only supported findings as to principal amount owed, but not amount of interest in judgment – [Lasala v. Nationstar Mortg., LLC](#), No. 4D15-129 (Fla. 4th DCA July 27, 2016) (reversed and remanded for determination of the amounts owed)

- **Foreclosure Sale:** trial court did not abuse its discretion in failing to set aside foreclosure sale where it considered equitable factors, including whether there was gross inadequacy of consideration, surprise, accident, or mistake, and irregularity in the conduct of the sale – [Lawrence v. Nationstar Mortg., LLC](#), No. 4D15-2509 (Fla. 4th DCA July 27, 2016) (affirmed)
- **Foreclosure/Fees Upon Prior Dismissal:** action brought by alleged assignee of note and mortgage should have been stayed pending assignee's payment of defendant's attorneys' fees and costs incurred in previously dismissed action brought by assignor – [Villalona v. 21st Mortg. Corp.](#), No. 4D15-4151 (Fla. 4th DCA July 27, 2016) (granting petition with directions)
- **Foreclosure/Notice of Default:** acceleration letter and payment history should have been admitted under business records exception to hearsay rule, and borrowers could not establish prejudice even if language in acceleration letter did not substantially comply with terms of paragraph 22 of mortgage – [Bayview Loan Servicing, LLC v. Heefner](#), No. 5D14-3296 (Fla. 5th DCA July 29, 2016) (reversed and remanded)
- **Foreclosure/Standing:** trial court erred when it failed to find lender had standing to foreclosure despite proof of valid, timely assignments of loan documents – [Nationstar Mortg., LLC v. Kelly](#), No. 5D15-2892 (Fla. 5th DCA July 29, 2016) (reversed and remanded)

## TITLE INSURANCE UPDATE

- **Access:** where insurer cures insured's lack of access with a 30 year right-of-way grant, insured has no covered claim under the policy's right-of-access provision – [Fidelity National Title Ins. Co. v. Woody Creek Ventures, LLC](#), Case No. 14-1274 (10<sup>th</sup> Cir. July 26, 2016) (affirming summary judgment)
- **Marketability:** lack of permanent access cured with a 30 year right-of-way grant, does not render title unmarketable – [Fidelity National Title Ins. Co. v. Woody Creek Ventures, LLC](#), Case No. 14-1274 (10<sup>th</sup> Cir. July 26, 2016) (affirming summary judgment)
- **Coverage:** title insurance policy only covers encumbrances that exist when the policy is issued – [BV Jordanelle, LLC v. Old Republic National Title Ins. Co.](#), Case No. 15-4127 (10<sup>th</sup> Cir. July 26, 2016) (affirming judgment on pleadings)
- **Subrogation:** insurer that pays tax lien to the benefit of its insured's grantor is entitled to judgment against grantor for breach of warranty deed – [Commonwealth Land Title Ins. Co. v. Rabeh](#), Case No. 12-6858 (E.D. Penn. July 25, 2016) (order granting summary judgment)

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