

# Real Property & Title Insurance Update: Week Ending August 5, 2016

August 11, 2016

## REAL PROPERTY UPDATE

- **Foreclosure/Discovery:** Good cause not found to enter protective order preventing owner of property, subject to foreclosure, from deposing bank's only witness on basis that owner of property was not a signatory to note or mortgage - [575 Adams, LLC v. Wells Fargo Bank, N.A., et al.](#), No. 3D16-1240 (Fla. 3d DCA August 3, 2016) (petition granted; order quashed; remanded).
- **Foreclosure/Standing:** trial court erred in granting borrower's motion for involuntary dismissal based on bank's failure to prove standing, where bank attached a copy of the blank endorsed note when it filed complaint and then, at trial, bank introduced identical original blank endorsed note - [ALS-RVC, LLC v. Garvin, et al.](#), No. 4D15-2538 (Fla. 4th DCA August 3, 2016) (reversed and remanded).
- **Foreclosure/Relief from Judgment:** orders vacating final judgment of foreclosure, certificate of sale, and certificate of title reversed, where motion to vacate final judgment did not allege proper grounds for relief pursuant to Florida Rule of Civil Procedure 1.540, and which grounds were already addressed in a prior motion and should have been raised on appeal - [Baez, et al. v. Perez](#), No. 4D16-456 (Fla. 4th DCA August 3, 2016) (reversed).
- **Foreclosure/Default Notice:** lender substantially complied with mortgage by mailing default notice to borrower's primary address, which was typewritten underneath borrower's signature on mortgage, but was not notice address listed on mortgage - [Federal National Mortgage Association v. Hawthorne, et al.](#), No. 4D15-3505 (Fla. 4th DCA August 3, 2016) (reversed and remanded).

- **Foreclosure/Service of Process:** trial court erred in denying motion to quash constructive service on limited liability company, where process server only attempted service at company's designated address, but failed to perform a diligent search and inquiry as to whereabouts of individuals who could bind company - [Green Emerald Homes, LLC, v. The Bank of New York Mellon, f/k/a the Bank of New York, as Trustee for the Certificate Holders of CWABS Inc., asset-backed certificates, series 2006-26](#), No. 4D15-848 (Fla. 4th DCA August 3, 2016) (reversed).

## TITLE INSURANCE UPDATE

- **Escrow:** a closing agent who is performing escrow duties pursuant to an escrow agreement is only liable pursuant to the escrow agreement and is not liable as an issuing title agent under an issuing agent agreement – [LEM 2Q, LLC v. Guaranty Nat'l Title Co.](#), Case No. 3472 EDA 2014 (Penn. Ct. App. July 28, 2016) (affirming summary judgment) to dismiss)
- **Insurable Interest:** insured has an insurable interest in property even if property was fraudulently mortgaged and was not assigned to subsequent insured, where insured has a title commitment and a reasonable expectation of deriving] pecuniary benefit from the preservation of the property and would suffer a direct pecuniary loss from the destruction of the interest – [Aries Investments, LLC v. First American Title Ins. Co.](#), Case No. A-0501-14T3 (N.J. Ct. App. Aug. 2, 2016) (unpublished opinion affirming jury verdict)
- **Liability:** the fact that a title insurer is the parent of a defendant entity is insufficient to support an allegation of alter-ego liability against the insurer – [Azran v. Fidelity Nat'l Fin., Inc.](#), Case No. 15 C 5116 (N.D. Ill., Aug. 3, 2016) (memorandum opinion granting motion

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