

Real Property & Title Insurance Update: Week Ending October 14, 2016

October 19, 2016

REAL PROPERTY UPDATE

- **Foreclosure/Standing:** foreclosing bank did not establish standing where it failed to submit evidence it was in possession of original note with blank endorsement at time of filing of foreclosure complaint - [Powers v. HSBC Bank USA, N.A.](#), Case No. 2D14-4857 (Fla. 2d DCA October 14, 2016) (Reversed and remanded).
- **Foreclosure/Statute of Limitations:** where foreclosing bank asserted a 2008 payment default date as basis for acceleration in action filed in 2014, defendant homeowner entitled to dismissal due to 5-year-long statute of limitations found in section 95.11(2)(c) - [Collazo v. HSBC Bank USA, N.A.](#), Case No. 3D14-2208 (Fla. 3d DCA October 13, 2016) (Reversed and remanded).
- **Foreclosure/Statute of Limitations:** where foreclosing bank's complaint specifically alleged that defendant failed to make a date-certain payment and all subsequent payments, and action was filed within five years of a default payment, lawsuit was timely under section 95.11(2)(c) - [Dhanasar v. JPMorgan Chase Bank, N.A.](#), Case No. 3D15-10 (Fla. 3d DCA October 13, 2016) (affirmed).
- **Foreclosure/Section 559.715 Notice:** notice requirement of section 559.715 does not operate as condition precedent to bringing mortgage foreclosure suit - [Bank of Am., N.A. v. Siefker](#), Case No. 4D14-1923 (Fla. 4th DCA October 13, 2016) (reversed and remanded).
- **Foreclosure:** trial court was within its discretion to not allow intervening third-party purchaser to challenge standing where purchaser obtained legal title after lis pendens had been recorded and a clerk's default had been entered against original homeowner - [State Trust Realty, LLC v. Deutsche Bank Nat'l Trust Co. Americas](#), Case No. 4D15-1667 (Fla. 4th DCA October 13, 2016) (Affirmed).

- **Foreclosure/Notice of Default:** where plaintiff-lender at trial unable to provide copy of paragraph 22 letter sent to borrower to prove it complied with mortgage, involuntary dismissal proper - [Hall v. ALS VII RVC, LLC](#), Case No. 5D15-765 (Fla. 5th DCA October 14, 2016) (Reversed and remanded).
- **Rule 1.540(b) Motion to Vacate:** appellant-bank's 1.540(b) motion to vacate brought four years after final judgment entered in favor of appellee-borrower untimely where bank could not show that court lacked subject-matter jurisdiction to enter final order - [U.S. Bank Nat'l Ass'n v. Anthony-Irish](#), Case No. 5D15-3153 (Fla. 5th DCA October 14, 2016) (affirmed).
- **Foreclosure/Regulation X:** lender had no duty to evaluate borrower's loss mitigation application submitted two days prior to scheduled foreclosure sale, and fact that foreclosure sale was postponed and actually transpired more than 37 days after loss mitigation application was submitted was immaterial; timeliness of borrower's application is measured on date that complete application is submitted - [Lage v. Ocwen Loan Servicing LLC](#), Case No. 15-15558 (11th Cir. October 7, 2016) (affirmed).

TITLE INSURANCE UPDATE

- **Agency/Tort Liability:** title insurer could not be held vicariously liable to mortgage lender, for conduct of title agent, when title agent served as dual agent for insurer and lender - [James B Nutter & Co. v. Old Republic National Title Ins. Co.](#), Case No. 15-CV-1979-TWT (N.D. Ga. Oct. 3, 2016) (Memorandum Opinion and Order).
- **CPL:** title insurer entitled to summary judgment on breach of CPL claim when mortgage lender admitted it could not demonstrate defect in title or inability to enforce mortgages after successfully conducting foreclosures on four out of ten loans at issue - [James B Nutter & Co. v. Old Republic National Title Ins. Co.](#), Case No. 15-CV-1979-TWT (N.D. Ga. Oct. 3, 2016) (Memorandum Opinion and Order).

Authored By



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