

Real Property & Title Insurance Update: Week Ending October 7, 2016

October 13, 2016

REAL PROPERTY UPDATE

- **Foreclosure:** debtor that agreed to “surrender” property in bankruptcy was required to surrender the property to the bankruptcy trustee and secured creditor, and lost right to defend secured creditor’s foreclosure action pending in state court - [Failla v Citibank, N.A.](#), Case No. 15-15626 (11 Cir. Oct. 4, 2016) (affirmed)
- **Standing:** borrower lacked standing to sue lender for violating statute that required timely recording of satisfaction of mortgage where satisfaction was recorded before borrower filed suit and borrower failed to allege he had suffered damages as a result of the delay - [Nicklaw v Citimortgage, Inc.](#), Case No. 15-14216 (11 Cir. Oct. 6, 2016) (appeal dismissed for lack of jurisdiction)
- **Foreclosure/Safe Harbor Limitation on Condo Assessments:** holder of note and mortgage, who was not also owner, having foreclosed mortgage on property and purchased it at foreclosure sale, is entitled to the safe harbor limitation of liability on condominium assessments applicable to first mortgagees under section 718.116, Fla. Stat. - [Brittany’s Place Condominium Assoc., Inc. v U.S. Bank, N.A.](#), Case No. 2D15-3444 (Fla. 2d DCA Oct. 5, 2016) (affirmed)

TITLE INSURANCE UPDATE

- **Timely Notice:** where lender named in prior lienholder’s foreclosure action did not give notice to insurer because it did not know that the subordination prior lender’s lien had not been recorded, a question of fact as to whether subsequent notice to insurer was timely precluded dismissal of action - [Greentree Servicing, LLC v. Chicago Title Ins. Co.](#), Case No. ED103906 (Mo. App. Oct. 4, 2016) (reversing order dismissing two counts of complaint)

- **Attorney Fees:** under Commonwealth law, insured is entitled to costs and fees for successfully establishing title insurer's breach of the duty to defend – [CH Properties, Inc. v. First American Title Ins. Co.](#), Case No. 13-1354 (D. Puerto Rico Oct. 4, 2016) (memorandum and order granting entitlement to fees)

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