

# Real Property & Title Insurance Update: Week Ending June 16 & 23, 2017

June 26, 2017

## Real Property Update US Supreme Court

- **Regulatory Taking:** owner of parcel A, that took title to adjacent parcel B after regulation restricting use of parcels had been passed, lost grandfather rights for both parcels by operation of merger and was not entitled to compensation for taking - [Murr, et al. v Wisconsin, et al.](#), Case No. 15-214 (U.S. June 23, 2017) (affirmed).

## Florida Courts

- **Foreclosure/Standing:** final judgment of foreclosure reversed for failure to prove standing at the inception of lawsuit - [Verizzo v The Bank of NY Mellon](#), Case No. 2D15-2508 (Fla. 2d DCA June 21, 2017).
- **Judgment Collection/Garnishment:** judgment creditor stated a cause of action for negligence against garnishee who failed to retain contents of judgment debtor's safe deposit box after being served with a writ of garnishment. Judgment debtor's subsequent discharge in bankruptcy did not bar judgment creditor's claim against garnishee - [Salcedo v Wells Fargo Bank, N.A.](#), Case No. 3D16-430 (Fla. 3d DCA June 21, 2017) (involuntary dismissal reversed).
- **Foreclosure/Surplus:** pursuant to section 45.033, Florida Statutes, surplus foreclosure proceeds are generally disbursed to owner of record (except in certain limited circumstances) and trial court erred by disbursing the proceeds to purchaser at foreclosure sale - [Rodriguez, et al. v Federal National Mortgage Assoc.](#), Case No. 5D17-196 (Fla. 5th DCA June 23, 2017) (reversed and remanded)

- **Foreclosure/Conditions Precedent:** testimony of lender's practice of creating and mailing breach letters and business record reflecting mailing raised a presumption that a breach letter was mailed to the borrower by first class mail in accordance with standards and in compliance with the mortgage's notice requirements - [Citibank, N.A., Trustee, et al. v Manning, et al.](#), Case No. 4D15-4526 (Fla. 4th DCA June 21, 2017)

## Title Insurance Update

- **Right of Access:** insured could state a claim for breach of policy based upon lack of right of access despite being able to obtain access under Louisiana law because insured would have to litigate in order to establish actual access to a public road - [BJD Properties, LLC v. Stewart Title Guaranty Co.](#), Case No. 16-01757 (W.D. La. May 22, 2017)(Report and Recommendation Adopted by District Court on June 15, 2017)
- **Attorneys' Fees:** in Texas first party claims litigation, insurer not required to produce its own billing records when challenging the insureds' attorney fee claims, because billing records are protected by the work-product privilege constituting a compilation of information that reveals an attorney's strategy and thought process, and records are irrelevant to fee challenge, where insurer did not compare its own fees to the insureds' or seek to recover its own fees – [In re Nat'l Lloyds Ins. Co.](#), Case No. 15-0591 (Tex. Jun. 9, 2017) (reversing appellate court and provisionally granting writ of mandamus; at odds with some other jurisdictions, including Florida)

## Related Practices

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