

Real Property & Title Insurance Update: Week Ending January 20, 2017

January 25, 2017

REAL PROPERTY UPDATE

- **Foreclosure/Vacating Judgment:** estate failed to either allege or prove any basis under Rule 1.540 to vacate final judgment of foreclosure to which it had consented – The [Bank of N.Y. Mellon v. Estate of Peterson](#), No. 2D16-2405 (Fla. 2d DCA Jan. 18, 2017) (reversing and remanding for reinstatement of final judgment).
- **Foreclosure/Claim for Surplus Funds:** sec. 45.031, Fla. Stat. requires that any person claiming a right to surplus funds file a claim with the clerk no later than sixty days after the foreclosure sale itself, not within sixty days of the certificate of sale, and, therefore, bank's claim for surplus funds untimely – [The Bank of N.Y. Mellon, as Trustee v. Glenville](#), No. 2D15-5198 (Fla. 2d DCA Jan. 20, 2017) (affirmed)
- **Foreclosure/Vacating Judgment:** trial court lacked jurisdiction to entertain borrower's motion to vacate foreclosure judgment, which asserted lender's counsel committed fraud on court in representing that borrower and her counsel were not present in the court room for trial when their case was called, because borrower's motion was filed over a year after entry of judgment and, therefore, was untimely under rule 1.540(b)(3) – [Romero v. Wells Fargo Bank, N.A., as Trustee](#), No. 2D15-5270 (Fla. 2d DCA Jan. 20, 2017) (vacating and remanding with instructions)
- **MRTA/Attorneys' Fees:** court properly awarded attorneys' fees under sec. 712.08, Fla. Stat., providing for costs, fees, and damages where any person has filed a false preservation notice under MRTA, where HOA had no authority to file preservation notice, regardless of HOA's lack of intent to file false claim – [Sand Lake Hills Homeowners Ass'n, Inc. v. Busch](#), No. 5D16-21 (Fla. 5th DCA Jan. 20, 2017) (affirming in part, reversing in part, and remanding)

TITLE INSURANCE UPDATE

- No Updates This Week

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