

Real Property & Title Insurance Update: Week Ending February 10, 2017

February 14, 2017

REAL PROPERTY UPDATE

- **Foreclosure:** where foreclosing bank, who purchased debt from original mortgagee, failed to establish standing to enforce lost note “through evidence of a valid assignment, proof of purchase of the debt, or evidence of an effective transfer,” summary judgment in favor of foreclosing bank improper [Houk v. PennyMac Corp.](#), Case No. 2D15-2583 (Fla. 2d DCA February 10, 2017) (reversed and remanded).
- **Foreclosure/Standing:** where foreclosing bank filed original note bearing blank indorsement with original complaint, it sufficiently established standing to enforce note - [U.S. Bank, N.A. v. Becker](#), Case No. 4D15-4615 (Fla. 4th DCA February 8, 2017) (reversed and remanded).
- **Foreclosure/Removal:** trial court lacked jurisdiction to render final summary judgment where defendants had filed a notice of removal to federal court and federal court had not yet remanded case back to trial court - [Mawhinney v. 998 SW 144th Court Rd, LLC](#), Case Nos. 5D15-2185; 5D15-2819 (Fla. 5th DCA February 10, 2017) (reversed and remanded).

TITLE INSURANCE UPDATE

- **Full Credit Bid:** Section 2 of the 1992 ALTA lender’s policy applies when a lender purchases property by full or partial-credit bid at a trustee’s sale – [Equity Income Partners, LP v. Chicago Title Ins. Co.](#), Case No. CV-16-0162-CQ (Ariz. Feb. 7, 2017)(answering certified question from 9th Circuit Court of Appeals)

- **Full Credit Bid:** a lender's full or partial-credit bid at a trustee's sale is not a "payment" or "payment made" under a 1992 ALTA lender's policy because to do so would render Section 2 meaningless and contravene Arizona public policy of protecting debtors – [Equity Income Partners, LP v. Chicago Title Ins. Co.](#), Case No. CV-16-0162-CQ (Ariz. Feb. 7, 2017)(answering certified question from 9th Circuit Court of Appeals)
- **Full Credit Bid:** a lender's full or partial-credit bid at a trustee's sale does not terminate coverage under Section 2(a)(i), reduce coverage under Section 2, or any possible liability under Section 7 of a 1992 ALTA lender's policy – [Equity Income Partners, LP v. Chicago Title Ins. Co.](#), Case No. CV-16-0162-CQ (Ariz. Feb. 7, 2017)(answering certified question from 9th Circuit Court of Appeals)

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