

Real Property & Title Insurance Update: Week Ending February 3, 2017

February 10, 2017

REAL PROPERTY UPDATE:

- **Foreclosure/Sufficiency of Notice:** although lender's notice of default did not expressly state that property could be sold in foreclosure, it substantially complied with notice provision (paragraph 22) of mortgage because it advised mortgagors they would lose their interest in and rights to property in event of foreclosure and notice contained the other necessary disclosures - [Wells Fargo Bank, N.A. v Guess](#), Case No. 2D15-4222 (Fla. 2d DCA February 1, 2017)(summary judgment reversed).
- **Foreclosure:** promissory note need not be attached to complaint to state claim on note and for foreclosure of mortgage, where mortgage and material terms of note were attached or incorporated in complaint - [Garron, LLC v Buchwald](#), Case No. 5D15-2279 (Fla. 5th DCA February 3, 2017) (reversed and remanded)
- **Foreclosure/Standing:** lender required to prove it was authorized by lender's predecessor to sign assignment of mortgage to itself, as attorney-in-fact for predecessor-lender, when borrower had asserted standing defense challenging lender's authority and validity of assignment - [Bonafide Properties, LLC v E-Trade Bank, et al.](#), Case No. 5D16-136 (Fla. 5th DCA Feb. 3, 2017) (reversed and remanded)

TITLE INSURANCE UPDATE:

- **CPL/Damages:** court did not abuse discretion in awarding damages that used value of property at time of foreclosure as offset against outstanding loan amount - [Aurora Loan Services v. Hirsch](#), 170 Conn. App. 439 (Conn. Ct. App. Jan. 31, 2017) (judgment affirmed)

- **CPL/Damages:** court properly refused to award attorneys' fees because CPL only provides for recovery of actual losses incurred in connection with closing - [Aurora Loan Services v. Hirsch](#), 170 Conn. App. 439 (Conn. Ct. App. Jan. 31, 2017) (judgment affirmed)
- **CPL/Prejudgment Interest:** court did not abuse discretion in awarding prejudgment interest from date of filing of complaint rather than date of closing - [Aurora Loan Services v. Hirsch](#), 170 Conn. App. 439 (Conn. Ct. App. Jan. 31, 2017) (judgment affirmed)
- **Bona Fide Purchaser:** void judgment in chain of title has effect of nullifying subsequent transfer to bona fide purchaser and thus bona fide purchaser took title to property subject to prior lien that had been cancelled via judgment that was set aside after transfer of title - [OC Interior Services, LLC v. Nationstar Mortgage, LLC](#), Case No. D070680 (Cal. Ct. App. Jan. 31, 2017) (reversed and remanded)

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