

# Real Property & Title Insurance Update: Weeks Ending March 10 & 17, 2017

March 20, 2017

## REAL PROPERTY UPDATE

- **Coequal Liens:** trial court properly authorized tax collector to issue tax certificates subject to community development district's assessment liens – [Villages of Avignon Community Dev. Dist. v. Manatee Cnty. Tax Collector](#), No. 2D16-1048 (Fla. 2d DCA Mar. 17, 2017) (affirmed but question of great public importance certified)
- **Foreclosure/Association's Lien:** because association's claim of lien dated back to 1989 declaration, its recorded interest predated bank's 2009 lis pendens, and therefore association's 2011 lien foreclosure action was not barred by bank's mortgage foreclosure action (although association's action inferior to foreclosure of first mortgage) – [Fountainspring II Homeowners Ass'n, Inc. v. Veliz](#), No. 4D15-3408 (Fla. 4th DCA Mar. 15, 2017) (reversed and remanded)
- **Code Enforcement Liens/Statute of Limitations:** applicable statute of limitations for filing suit to foreclose code enforcement lien is twenty years; trial court erred in ruling otherwise – [City of Riviera Beach v. J & B Motel Corp.](#), No. 4D16-0174 (Fla. 4th DCA Mar. 15, 2017) (reversed and remanded)
- **Foreclosure/Standing:** because JPMorgan's indorsement was an anomalous indorsement, plaintiff's possession of note did not make it a holder and, therefore, plaintiff needed to, but did not, establish standing by showing it was a nonholder in possession of note with rights of a holder – [PennyMac Corp. v. Frost](#), No. 4D16-262 (Fla. 4th DCA Mar. 15, 2017) (affirmed)

- **Foreclosure/Original Note:** trial court erred (1) in denying original note's admissibility because placement of undated blank endorsement on note after filing of complaint did not affect note's authenticity and enforceability, and (2) by involuntarily dismissing bank's action before bank completed its presentation of evidence – [U.S. Bank Nat'l Ass'n as Trustee v. Roseman](#), No. 4D16-876 (Fla. 4th DCA Mar. 15, 2017) (reversed and remanded)
- **Foreclosure/Condition Precedent:** HUD regulation requiring face-to-face meeting prior to foreclosure is condition precedent to foreclosure - [Harris v. U.S. Bank National Association, a Trustee for the Certificate Holders of the LXS 2007-16N Trust Fund](#), No. 1D15-2022 (Fla. 1st DCA March 10, 2017) (affirmed).
- **Foreclosure/Condition Precedent:** affidavit in opposition to summary judgment created a genuine issue of material fact where there was a factual issue as to applicability of exception to HUD regulation requiring face-to-face meeting when mortgaged property not within 200 miles of Lender, its servicer, or branch office of either - [ARC HUD I, LLC v. Ebbert et al.](#), No. 2D15-4848 (Fla. 2d DCA March 8, 2017) (reversed and remanded)
- **Ejectment:** trial court erred in entering order of ejectment, which operated as de facto grant of summary judgment, without Plaintiff filing proper summary judgment motion establishing entitlement to relief sought in pleadings, and that disproves conclusively defendant's entitlement to relief - [Abundant Living Citi Church, Inc., v. Abundant Living Ministries, Inc., et al.](#), No. 3D16-2649 (Fla. 3d DCA March 10, 2017) (reversed)
- **Equitable lien/Homestead exemption:** plaintiff entitled to foreclose equitable lien imposed to prevent unjust enrichment of defendant in that it secured monies paid to satisfy pre-existing mortgage on homestead property - [Flinn v. Doty, as Personal Representative of the Estate of Robert Flinn, deceased](#), No. 4D-2424 (Fla. 4th DCA March 8, 2017) (affirmed in part and reversed in part)

## TITLE INSURANCE UPDATE

- **Res Judicata:** title insurer barred from re-litigating equitable subrogation and reformation claims in its own name where it had controlled prosecution of first action brought by loan servicer that lacked standing to bring first suit, resulting in judgment in favor of borrower - [The Bank of New York Mellon, Trustee v. Heinz Otto Georg](#), Case No. 2396 (Md. Ct. Spec. App. March 10, 2017) (unreported)
- **Duty to Defend:** duty to defend not triggered under policy based upon mere assertions of public right of way when there was no third party claiming interest against title of insured or any specified loss caused by hypothetical encumbrance - [Osprey Landing, LLC v. First American Title Ins. Co.](#), Case No. Lin-16-298 (Me. March 9, 2017)

- **Marketability of Title:** mere possibility of future claims for public easements does not render title unmarketable and thus trigger insurer's duty to defend - [Osprey Landing, LLC v. First American Title Ins. Co.](#), Case No. Lin-16-298 (Me. March 9, 2017)

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