

Real Property & Title Insurance Update: Week Ending April 5, 2019

April 06, 2019

Real Property Update

- **Foreclosure / Standing:** bank cannot rely solely on its acquisition of prior lender to prove standing where note was specially indorsed to prior lender - [Certo v. The Bank of New York Mellon](#), No. 1D17-4421 (Fla. 1st DCA Apr. 3, 2019) (reversed and remanded)
- **Foreclosure / Self-Authentication:** loan modification agreements are self-authenticating under section 90.902(8), Florida Statutes and should have led trial court to enter final judgment of foreclosure in favor of bank - [Wells Fargo v. Quest Sys. LLC](#), No. 2D17-1184 (Fla. 2d DCA Apr. 3, 2019) (reversed and remanded)
- **Foreclosure Sale:** notice to attorney of record constitutes notice to attorney's client for the purpose of due process regarding notice of hearing on borrower's objections to the conduct of a foreclosure sale - [Waldman v. Laquer Family Holdings](#), No. 3D18-2116 (Fla. 3d DCA Apr. 3, 2019) (affirmed)
- **Foreclosure / Standing:** presumption of standing applies where lender files original note in same condition as copy attached to its complaint, even where the loan number on copy of note has been redacted - [Kronen v. Deutsche Bank Nat'l Trust Co.](#), No. 4D18-1137 (Fla. 4th DCA Apr. 3, 2019) (affirmed)

Title Insurance Update

- **Equitable Subrogation / Fraud:** lender was entitled to equitable subrogation even if signature of co-borrower had been forged on mortgage - [Wells Fargo, N.A. v. Dalfin](#), No. 2016-0511, 169 A.D.3d 970 (N.Y. App. 2d Dept. Feb. 20, 2019) (granting summary judgment)

- **Negligence / Negligent Search:** title insurer not liable on negligent search claim where title insurer had already paid insured full policy limits on insured's claim - [Friedberg v. Bullard](#), No. 2:18-cv-00061 (E.D. Ark. Mar. 6, 2019) (granting summary judgment)
- **Timeshares / Insuring Multistate Timeshares:** title insurer that insured interests in timeshare properties entitled to dismissal because claim was not ripe since insureds had not made claims on their title policy and because Florida statutes allowed a valid real property interest in a multistate timeshare - [Lenmen v. Marriott Ownership Resorts, Inc.](#), No. 6:16-cv-855-Orl-41TBS (M.D. Fla. Mar. 31, 2019) (granting dismissal)
- **Bad Faith:** title insurer's three-page denial letter explained in detail, with legal citation, why marketability claim based on mechanic's liens was not covered - [Culley v. Bank of Am., N.A.](#), No. 18-cv-40099-DHH (D. Mass. Mar. 29, 2019) (granting dismissal of bad faith claim)
- **Closing Agent Fraud / Damages:** "willful and wanton" instruction on contributory negligence defense misstated the law, and damages were not reduced to account for loss of market value of properties between purchase and foreclosure sale of fraudulently flipped properties, since economic downturn was not sufficiently connected to escrow agent's misconduct - [FDIC v. Chicago Title Ins. Co.](#), No. 12-cv-05198 (N.D. Ill. Mar. 31, 2019) (granting motion for new trial)

Related Practices

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