

Real Property, Financial Services, & Title Insurance Update: Week Ending December 6, 2019

December 12, 2019

Real Property Update

- **Due Process:** Trial court violated developer's due process rights by considering and ruling upon developer's motion to quash service of process, which was not set for hearing, despite developer's objection to having the motion heard and demand for an evidentiary hearing – [Bluebone Dev., LLC v. Malibu Bay Cmty. Ass'n, Inc.](#), No. 3D19-1099 (Fla. 3d DCA Dec. 4, 2019) (reversed and remanded)
- **Foreclosure / Summary Judgment / Sufficiency of Affidavit:** Lender's affidavit of indebtedness was legally insufficient because relevant business records were not attached as support – [Richard v. Asset Mgmt. W. 15, LLC](#), No. 2D18-4599 (Fla. 2d DCA Dec. 4, 2019) (reversed and remanded)
- **Foreclosure / Standing:** Lender's failure to prove standing at the inception of the lawsuit required involuntary dismissal of foreclosure action – [Robinson v. Nationstar Mortg. LLC](#), No. 2D18-2842 (Fla. 2d DCA Dec. 4, 2019) (judgment reversed and remanded for entry of dismissal)
- **Foreclosure / Acceleration:** Lender can accelerate all amounts due, including installments that had remained unpaid for more than five years, as long as the default date pleaded and proved was within five years of when the complaint was filed – [U.S. Bank Tr., N.A. v. Leigh](#), No. 5D17-2967 (Fla. 5th DCA Dec. 6, 2019) (reversed and remanded)

- **Homestead / Coop:** Affirming trial court's decision that decedent's cooperative apartment could not be considered homestead property for the purpose of devise and descent based upon Florida Supreme Court's precedent that cooperative stock is not considered a fee simple interest in land as required by law, while recertifying as a question of great importance whether that law has continuing vitality following the adoption of the Florida Cooperative Act, Chapter 76-222 – [Walters ex rel. Estate of Enid May Townsend v. Agency for Health Care Admin.](#), No. 3D18-1505 (Fla. 3d DCA Dec. 4, 2019) (affirmed)

Title Insurance Update

- **Fiduciary Duty:** Comparative fault is inapplicable to a breach of fiduciary duty claim against an escrow agent pursuant to Illinois law – [Fed. Deposit Ins. Corp. v. Chicago Title Ins. Co.](#), No. 1:12-cv-05198 (N.D. Ill. Dec. 3, 2019) (memorandum opinion and order granting motion for partial judgment on pleadings)

Financial Services Update

- **RESPA / Actual Damages:** Summary judgment appropriate where no dispute of material fact as to whether plaintiff suffered actual damages from defendants' allegedly inadequate responses to request for information under section 2605 – [Yap v. Deutsche Bank Nat'l Tr. Co.](#), No. 19-15210 (9th Cir. Dec. 2, 2019)
- **TILA / Statute of Limitations:** Plaintiff's TILA claim was time-barred, where brought more than one year after residential mortgage transaction closed – [Greene v. Intuit Inc.](#), No. 19-11016 (11th Cir. Nov. 26, 2019) (affirming dismissal)
- **RESPA / Section 10 / No Private Right of Action:** No private right of action under section 10 of RESPA, as secretary of HUD assesses civil penalties for violations of that section – [Greene v. Intuit Inc.](#), No. 19-11016 (11th Cir. Nov. 26, 2019) (affirming dismissal)

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