

Real Property, Financial Services, & Title Insurance Update: Week Ending July 19, 2019

July 20, 2019

Real Property Update

- **Foreclosure / Condo Assessments:** under section 718.116(1)(a), Florida Statutes, present condo owner is jointly and severally liable with the previous owner for unpaid assessments and related expenses that come due during the ownership of both the previous owner (unless the original owner was the association) and the original owner - [Coastal Creek Condo Ass'n, Inc. v. Fla Trust Services LLC](#), No. 1D18-1457 (Fla. 1st DCA July 16, 2019) (reversing final summary judgment and certifying conflict with the Third District)
- **Foreclosure / Constructive Possession / Agency:** bank provided sufficient evidence that is constructively possessed the subject note through its servicing agent when it filed its complaint; bank called servicer's representative to testify and admitted into evidence limited powers of attorney between the bank the servicer, the original note and mortgage, the assignment of the note and mortgage to the bank, copies of the loan modification, loan payment records, bailee letters, and the amount of debt owed - [U.S. Bank Nat'l Ass'n, as Trustee v. Cook](#), No. 2D16-5243 (Fla. 2d DCA July 17, 2019) (reversing involuntary dismissal of foreclosure complaint)
- **Foreclosure / Standing:** appellants lacked standing to appeal final judgment of foreclosure where they took their interest in the property subject to a recorded lis pendens and the final judgment and stipulated to the title transfer to the bank - [Taufer v. Wells Fargo Bank, N.A.](#), No. 3D18-2004 (Fla. 3d DCA July 17, 2019) (dismissing appeal)

- **Foreclosure / Deposit:** under section 45.031(3), Florida Statutes, when a final payment is not made by the successful high bidder in a foreclosure sale, the clerk is required to re-advertise the sale and pay all costs of the sale from the deposit; any remaining funds are to be applied towards the judgment - [Space Coast Credit Union v. Day](#), No. 3D19-689 (Fla. 3d DCA July 17, 2019) (reversing and remanding)
- **Foreclosure / Standing:** bank established standing to foreclose on lost note where bank introduced testimony that no other entity was entitled to enforce the lost note and introduced two assignments of mortgage showing that the mortgage and note were transferred from the original lender to a third party and then from the third party to the bank - [Deutsche Bank Nat'l Trust Co. v. Smith](#), No. 4D18-2265 (Fla. 4th DCA July 17, 2019) (reversing involuntary dismissal of foreclosure complaint)

Financial Services Update

- **FDCPA / Statute of Limitations:** affirms district court's dismissal of *pro se* complaint alleging violations of FDCPA because the claims were time-barred - [Bruce v. U.S. Bank Nat'l Ass'n](#), No. 18-10553 (11th Cir. 2019).
- **FCRA / Article III Standing:** grants motion to dismiss complaint alleging violations of the FCRA based on a credit bureau's failure to include certain information, including third-party inquiries, in plaintiffs' credit report because plaintiffs lacked Article III standing where they did not allege a material risk of harm based on incorrect consumer information - [Carson v. Experian Info. Solutions, Inc.](#), No. 17-cv-02232 (C.D. Cal. July 9, 2019)

Title Insurance Update

- **Equitable Subrogation:** lender was entitled to equitable subrogation despite actual knowledge of prior mortgage where it relied on notation in title commitment omitting prior mortgage as an exception based on an indemnity letter - [Wilmington Sav. Fund Soc'y, FSB v. 61 Holdings, LLC](#), No. A-1971-17T4 (N.J. App. July 12, 2019) (affirming summary judgment)
- **Title Insurance Coverage:** owner's title policy did not cover loss of value from property turning out not to be lakefront where policy's legal description incorporated a plat that clearly showed the property's boundary as 18 feet landward of waterline - [Schiller v. Fid. Nat'l Title Ins. Co.](#), No. 72906 (Nev. July 15, 2019) (affirming dismissal)
- **Business of Title Insurance:** title agency waived its right to challenge administrative penalties by entering into settlement with administrative agency - [Am. Homeland Title Agency, Inc. v. Robertson](#), No. 18-3293 (7th Cir. July 15, 2019) (affirming dismissal)

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