

Real Property & Title Insurance Update: Week Ending March 29, 2019

March 30, 2019

Real Property Update

- **Foreclosure / Attorneys' Fees:** borrower not entitled to attorneys' fees for prevailing on lender's claim for reformation of mortgage, where lender prevailed on claim of foreclosure without reformation - [Deutsche Bank, Nat. Trust Co. v. Quintela](#), No. 4D18-873 (Fla. 4th DCA Mar. 27, 2019) (reversed)
- **UCC / Promissory Note:** adjustable rate and amortization provisions in note did not render it non-negotiable - [Hanna v. Pennymac Holdings, LLC](#), No. 4D18-1400 (Fla. 4th DCA Mar. 27, 2019)
- **Inverse Condemnation:** four-year statute of limitations for inverse condemnation action starts to run when the owner is denied the economic use or benefit of the subject property, and not when the owner discovers the monetary damages resulting from the taking. [Campbell v State of Florida, Dept. Of Transportation](#), No. 1D-18283 (Fla. 1st DCA Mar. 28, 2019) (affirmed)

Title Insurance Update

- **Equitable Subrogation:** New York's six year statute of limitation on counterclaim for equitable subrogation that relates to a mortgage foreclosure begins to run when the borrower defaults on the first mortgage - [Patmos Fifth Real Estate Inc. v. Mazl Building LLC](#), No. 8377N, 108421/11 (N.Y. App. Feb. 7, 2019) (affirming order denying motion to amend counterclaim)

- **Equitable Subrogation:** lender not entitled to foreclose its mortgage against borrower's spouse who did not sign mortgage, but is entitled to equitable lien in the amount of loan proceeds used to pay off a prior lien, less the amount of payments used pay the lender's mortgage - [Crawford v. Fed. Nat'l. Mortg. Ass'n.](#), No. 5D17-3027 (Fla. 5th DCA Mar. 22, 2019) (affirming in part and reversing in part final judgment after bench trial and remanding with instructions)
- **Coverage:** trial court erred in determining as a matter of law that title insurance policy does not provide coverage for unrecorded plat created prior to conveyance of insured lot described in prior, recorded plat and that unrecorded plat constitutes a defect in title - [Loflin v. BMP Development, LP](#), No. 2016-001840 (S.C. App. Mar. 27, 2019) (reversing and remanding order granting motion for summary judgment)
- **Statute of Limitations:** 20 year statute of limitations applies to breach of title insurance policy claim per South Carolina statute of limitations as to sealed instruments - [Loflin v. BMP Development, LP](#), No. 2016-001840 (S.C. App. Mar. 27, 2019) (reversing and remanding order granting motion for summary judgment)
- **Marketability:** title insurance covers marketability of title, not marketability of land, and if insured holds perfect title to valueless land there is no claim on the policy - [N. Cal. Cmty. Dev. Corp. v. First Am. Title Ins.](#), No. C084779 (Cal. App. Mar. 28, 2019) (affirming order granting summary judgment)
- **Exclusion 3(a):** claim that arises out of an agreement entered into by the insured is not covered because the agreement was "created, suffered, assumed, or agreed to" by the insured and excluded by the policy, even if the agreement recites pre-agreement claims to title to the property that are subsumed within the agreement - [3 West 16th St., LLC v. Commonwealth Land Title Ins. Co.](#), No. 18-Civ.-1914 (S.D.N.Y. Mar. 28, 2019) (order adopting report and recommendation)

Related Practices

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