

Real Property, Financial Services, & Title Insurance Update: Week Ending December 11, 2020

December 11, 2020

Real Property Update

- **Foreclosure / Pleading Fraud Defense:** Trial court erred in providing relief of fraud as defense to foreclosure where fraud was never pleaded; even if fraud had been pleaded, party failed to prove burden that such fraud or duress was participated in to some extent by mortgagee - [JAK Capital, LLC v. Adams](#), No. 2D19-4371 (Fla. 2d DCA Dec. 9, 2020) (reversed and remanded for entry of foreclosure judgment)
- **Foreclosure / Deficiency / Statute of Limitations:** Florida Statutes section 95.11(5)(h)'s one-year statute of limitations that runs from time clerk of court issues certificate of title applies to motions for deficiency judgment brought within an existing foreclosure action; motion for deficiency judgment is an "action to enforce a claim of a deficiency" - [Accardi v. Regions Bank](#), No. 4D20-0662 (Fla. 4th DCA Dec. 9, 2020) (final judgment awarding deficiency reversed and remanded)
- **Foreclosure / Standing:** Fannie Mae failed to prove servicer had standing to foreclose at inception of lawsuit where no evidence was offered demonstrating it gave servicer authority to enforce the note - [Cortorreal-Poche v. Fed. Nat'l Mortg. Ass'n](#), No. 5D19-3419 (Fla. 5th DCA Dec. 11, 2020) (reversing final judgment of foreclosure)

Financial Services Update

No cases of interest to report.

Title Insurance Update

- **Coverage / Quiet Title / Stay:** Stay of title coverage case was appropriate where issue, whether ALTA 1992 loan policy of title insurance with form endorsements provides lender with defense and indemnity for purchaser at HOA foreclosure sale's quiet title action seeking to extinguish mortgage lien, was on appeal to the Ninth Circuit and could be dispositive - [Nationstar Mortg. LLC v. Westcor Land Title Ins. Co.](#), No. 2:20-cv-00972 (D. Nev. Dec. 3, 2020) (granting motion to stay pending appeal)

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