

Real Property & Title Insurance Update: Week Ending August 12, 2016

August 17, 2016

REAL PROPERTY UPDATE

- **Jurisdiction/Deficiency Judgment:** Second DCA agrees with Third DCA that “a circuit court has subject matter jurisdiction to adjudicate an independent deficiency action when the plaintiff had requested deficiency relief in its complaint in a separate foreclosure action involving the same note and the foreclosure court had entered a final judgment reserving jurisdiction to grant deficiency relief[,]” and certified conflict with First DCA's decision in *Higgins v. Dyck-O'Neal, Inc.* - [Dgovin v Dyck-O-Neal, Inc.](#), Case 2D16-394 (Fla. 2d DCA Aug. 10, 2016) (affirmed, conflict certified).
- **Foreclosure/Standing to Sustain Defense:** non-party to mortgage or note lacked standing to assert as defense to foreclosure that lender did not comply with condition precedent by failing to provide notice to borrower - [LaFaille v Nationstar Mortgage, LLC d/b/a Champion Mortgage Company](#), Case No. 3d15-1561 (Fla. 3d DCA Aug. 10, 2016) (affirmed).
- **Judgment Lien:** judgment creditor's address required in judgment or affidavit to perfect judgment lien on real property; an address “care of” judgment creditor's attorneys was legally insufficient to support lien - [Gomez v Timberoof Roofing Co., Inc., et al.](#), Case No. 4D14-4685 (Fla 4th DCA August 10, 2016) (reversed and remanded).
- **Foreclosure:** trial court erred by refusing to release original note to assignee following dismissal of assignor's foreclosure action for assignor's failure to prove standing at trial; failure to prove standing does not mean assignor did not own note - [Kajaine Estates, LLC v. US Bank National Ass'n, et al.](#), Case No. 5D15-1892 (Fla 5th DCA August 12, 2016) (reversed and remanded).

- **Technical Admissions:** technical admissions that resulted from lender's failure to timely respond to request for admissions precluded lender's ability to prove it was the bearer, holder, or possessor of the note entitled to reestablish same - [Poag v Nationstar Mortgage, LLC](#), Case No. 1D15-2464 (Fla. 1st DCA August 12, 2016) (reversed and remanded)

TITLE INSURANCE UPDATE

- **Coverage, Exclusion 3(a):** title insurer had no duty to defend insured in quiet title action when allegations of complaint relating to insured's alleged inequitable or tortious conduct was alleged to extinguish insured's interest in property, and insured properly invoked exclusion in paragraph 3(a) of mortgagee policy - [LJW Land, LLC v. Old Republic National Title Ins. Co.](#), Case No. 15-CV-00190 (W.D.N.C. Aug. 12, 2016)(memorandum order).
- **Escrow duties:** plaintiff failed to state cause of action against title insurer that served as escrow agent because an escrow holder's obligations are limited to compliance with escrow instructions and plaintiff failed to attach or allege escrow instructions that were given to escrow agent - [McCready v. Chicago Title Co.](#), Case No. G051324, (Cal. Ct. App. Aug. 5, 2016)(unpublished opinion);[Barrons v. Chicago Title Co.](#), Case No. G051328 (Aug. 5, 2016); [Kornievsky v. Chicago Title Co.](#), Case No. G051337 (Cal. Ct. App. Aug. 5, 2016).
- **Escrow duties:** generic and conclusory allegations that escrow agents knew about fraud perpetrated by other defendants without any specific allegations of wrongdoing or false statements was insufficient to state cause of action based upon misrepresentations or fraud - [McCready v. Chicago Title Co.](#), Case No. G051324, (Cal. Ct. App. Aug. 5, 2016)(unpublished opinion);[Barrons v. Chicago Title Co.](#), Case No. G051328 (Aug. 5, 2016); [Kornievsky v. Chicago Title Co.](#), Case No. G051337 (Cal. Ct. App. Aug. 5, 2016).

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