

Real Property & Title Insurance Update: Week Ending January 13, 2017

January 19, 2017

REAL PROPERTY UPDATE

- **Foreclosure:** where a valid mortgage properly encumbers the subject property, an incorrect deed and a reformation of deed count are not fatal to a foreclosure action - [Heartwood 2, LLC v. Dori](#), Case No. 3D15-2576 (Fla. 3d DCA January 11, 2017) (reversed and remanded).
- **Affirmative Defenses:** where tenant raised affirmative defenses to enforcement of lease action, and landlord failed to reply to said affirmative defenses, landlord's affidavit in support of summary judgment was insufficient where it failed to factually refute the affirmative defenses - [Genuinely Loving Childcare, LLC v. Bre Mariner Conway Crossings, LLC](#), Case No. 5D15-4168 (Fla. 5th DCA January 13, 2017) (Reversed in part, affirmed in part).

TITLE INSURANCE UPDATE

- **Exclusion:** mortgagee's loss under title insurance policy properly denied because such loss was "created, suffered, assumed or agreed to" by the insured, where mortgagee wired funds to escrow account for attorney for borrowers with instructions to perform certain duties on its behalf as settlement agent and agent misappropriated funds - [Plaza Home Mortgage, Inc. v. Fidelity Nat'l Title Ins. Co.](#), Case No. 2015-00930, Dec. 28, 2016, __ N.Y.S.3d __ (N.Y. App. Div.) (affirming summary judgment).

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