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FLTA Files Amicus Brief with Florida Supreme Court

November 15, 2011

On Monday, the Florida Land Title Association filed a “Friend of the Court” brief with the Florida Supreme Court in the long-watched case of Wells Fargo v. City of Palm Bay. The issue in that case was the all too common practice of local governments adopting ordinances under which they assert that their liens have priority on a par with taxes, and thus can wipe out a previously filed mortgage.

Under Florida Law, a local government can impose a fine of up to \$500 per day until a violation has been cured, so it doesn’t take long for the fines to exceed the value of most properties.

The Fifth District Court of Appeal reached the right conclusion (perhaps for the wrong reason) that changing priority of liens was beyond the authority of local governments. They then certified the question as one of great public importance to the Supreme Court.

This is a critical issue for the title industry. We need certainty as to this issue in order to decide whether a mortgage foreclosure has validly eliminated local government liens (the underlying violation, if not cured of record, should still be disclosed). And we need to protect the sanctity of the official records as dispositive of real property interests.

We would expect mortgage lenders, including Fannie and Freddie, to respond to a ruling which allowed each local government to set its own lien priority by further restricting mortgage lending; or worse yet, imposing additional burdens on the closing agent by way of written closing instructions requiring us to determine whether the local government has any ordinances which might give rise to a super-priority lien.

Our special thanks to Homer Duval of Fidelity National Title Insurance who is co-counsel on this amicus with our Executive Director Alan Fields. They spent many hours drafting and fine tuning the analysis and arguments. Also we appreciate the technical expertise and assistance of two great real estate litigators (and FLTA members), Marty Awerbach & Rod Neumann. Copies of the FLTA brief and other documents relevant to the case are available [Here](#).

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