



# Christopher Smart

SHAREHOLDER

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## Overview

For 20 years, Chris Smart has tried real estate, title insurance, and consumer finance cases on behalf of national title insurance companies, mortgage lenders, and real estate owners, developers, and investors. He has handled high-profile litigation involving title insurance coverage, closing protection letter claims, title agent defalcations, and insurance bad faith claims. He has also tried lender liability, consumer protection, loan servicing, and mortgage foreclosure cases and defended real property developers.

Chris' trials have involved litigation over the sale of real property, the authority to sell real property, a buyer's status as a bona fide purchaser for value, condominium developments, restrictive covenants, easements, and Florida's Marketable Record Title Act. Recently, Chris led a team in a two-week jury trial defending against the plaintiffs' claims for damages and punitive damages based on a negligence cause of action against a title insurer, which resulted in a favorable settlement for the client prior to closing arguments.

As a complement to his substantial trial experience, Chris also has a comprehensive understanding of the real estate industry and title to real property, and serves as an expert witness on Florida's real estate industry practices and customs. He is the current chair of the Real Property, Probate, and Trust Law Section of the Florida Bar's Title Insurance and Title Liaison Committee and the former longtime chair and continuing active member of the Title Issues and Standards Committee. The latter committee reviews, revises, maintains, and promotes Florida's Uniform Title Standards, an essential guide for real estate practitioners navigating difficult questions about marketability of title. He also works with the section to promote legislation necessary for and helpful to Florida's real estate industry. Chris is the 2023 recipient of the John Arthur Jones Annual Service Award, awarded by the Real Property, Probate, and Trust Law Section for his dedicated and outstanding service to the section. He is also an active member of the Florida Bar's Code and Rules of Evidence Committee.

## Experience

- *Salas v. Commonwealth Land Title Insurance Co.*, No. 22-12264 (11th Cir. Oct. 18, 2023). Opinion affirming district court's adoption of magistrate judge's report and recommendation converting Commonwealth's motion to dismiss to a motion for summary judgment and granting the motion because the standard policy exclusion 3(a) is clear and unambiguous and excluded coverage for liquidated damages and penalties that the insured agreed to in the terms of its purchase agreement.
- *Pride of Fort Lauderdale v. Eutsey*, No. CACE18006142 (Fla. 17th Cir. Ct. Sept. 1, 2023). Order granting Fidelity National Title Insurance Co.'s motion to dismiss with prejudice as to plaintiffs' claims that Fidelity prepared and recorded a deed in connection with a larger scheme to defraud the plaintiffs, where plaintiffs had originally sued Fidelity, then voluntarily dismissed Fidelity, and then attempted to bring Fidelity back in after the statute of limitations had run.
- *1905 Assocs., LLC v. Country Club Maint. Ass'n d/b/a Broken Sound Master Association*, No. 2021-CA-012280 (Fla. 15th Cir. Ct. Jan. 27, 2023). Order granting final summary judgment, entering final declaratory judgment, and quieting title in favor of clients. The court held that prior owner took title to commercial property without notice of any alleged right of homeowners association to assess or lien such property and, as such, prior owner was a bona fide purchaser for value without notice and conveyed that same title to its successor in title.
- *McCormick Mile Invest., LLC v. Barnes*, No. 4D21-2357 (Fla. 4th DCA Nov. 9, 2022). Per curiam citation affirmance of final judgment finding that developer — who platted all of its property, depicted certain waterways and canals on the plat, and deeded the lots to purchasers without express reservation of those waterways and canals — deeded out title to the waterways and canals to the adjacent lot owners pursuant to Florida's centerline rule of construction and, further, thereby also created irrevocable easements in favor of the lot owners over the waterways and canals.

- *Gaspar's Passage v. Chicago Title Ins. Co.*, No. 2016-CA-002680 (Fla. 6th Cir. Ct. Oct. 10-21, 2022). Led a trial team in a two week jury trial on damages and punitive damages based on a negligence cause of action against a title insurance company and postured the litigation for client's successful settlement of case prior to closing arguments
- *Kim v. Galasso*, No. 2D20-3313 (Fla. 2d DCA Aug. 3, 2022). Opinion affirming summary judgment in favor of client and finding that trees planted on real property were conveyed as part of the realty, absent a contract clearly showing the intent to make the trees personal property that complied with the statute of frauds that would have taken the trees out of the general common law rule that standing timber is an interest in realty.
- *Cuidad de Nuestros Angeles I, LLC v. Inverrary Resort Hotel Condo. Assoc., Inc.*, No. 19-2019(02) (Fla. 17th Cir. Ct. July 8, 2022). Order granting final summary judgment and entering final judgment in favor of client, finding that purchaser of property was on constructive notice of a recorded easement agreement notwithstanding the purchaser's contested allegations that the agreement had been "improperly indexed," had in effect been given by a "stranger" to title, and that the association that gave the easement lacked the authority to do so.
- *Weiss v. Towers of Blue Lagoon 1 Inc.*, No. 2014-030864-CA-01 (Fla. 11th Cir. Ct. Mar. 14, 2022). Order granting summary judgment and finding that, despite the fact that mortgage lender had actual knowledge of the claims in the litigation prior to taking the mortgage, the lender took its mortgage lien "exempt" from the claims of the plaintiff and from any judgment in the case, as if it had "no actual or constructive notice of the proceeding or the claims made therein or the documents forming the causes of action against the property in the proceeding," pursuant to Florida's lis pendens statute, section 48.23, because the lender took its mortgage after the plaintiff had allowed its lis pendens to be discharged.
- *Kline v. True Shot, LLC*, No. 2019CA003810 AI (Fla. 15th Cir. Ct. Feb. 11, 2022). Provided expert testimony on the industry standards and practices concerning marketability of title of a golf course property where the golf course and surrounding residential community were both depicted on an unrecorded map and the residential owners sought to impose an equitable servitude to keep the golf course a golf course in perpetuity; the court entered a final judgment determining that the plaintiff residential owners failed to establish a basis for imposing an equitable servitude.
- *Barnes v. McCormick Mile Invs., LLC*, No. 50-2020-CA-004136 (Fla. 15th Cir. Ct. Aug. 9, 2021). Final judgment finding that developer — who platted all of its property, depicted on the plat certain waterways and canals, and deeded the lots to purchasers without express reservation of the waterways and canals — deeded out title to the waterways and canals to the adjacent lot owners pursuant to Florida's centerline rule of construction and, further, thereby also created irrevocable easements in favor of the lot owners over the waterways and canals.

- *Jockey Club Condo. Apartments, Inc. v. Apeiron Miami, LLC*, Nos. 3D17-1393, 3D17-1494 (Fla. 3d DCA June 3, 2020). Written opinion affirming developer client’s victory at trial over adjacent property owner associations who had sued to stop the client’s development and holding that (i) original developer’s agreement was not a covenant running with the land or binding on a successor-in-title by virtue of its “successors and assigns” language and (ii) trial court did not abuse its discretion in granting rehearing in order to rule that developer was entitled to develop and maintain its property, without consent of adjacent owners, and to remove significant portions of that property from a stop-gap easement granted by agreement to those adjacent owners.
- *Castillo v. United States*, 952 F.3d 131 (Fed. Cir. 2020). Provided expert testimony as to industry standards and practices relating to the application of Florida’s centerline rule of presumption to title to real property underlying a railroad corridor, which rule “provides that when a road or other corridor forms the boundary of a landowner’s parcel, that landowner owns the fee interest in the abutting corridor land up to the corridor’s centerline, unless there is clear evidence to the contrary.”
- *Rubinstein v. Keshet Inter Vivos Trust*, No. 0:17-cv-61019 (S.D. Fla. Aug. 13, 2019). Final judgment granting directed verdict after seven-day jury trial on the plaintiffs’ claims for rescission and quieting title to property in our clients’ name.
- *Carson v. Wells Fargo Bank, N.A.*, No. 8:10-cv-02326, 2018 WL 4442275 (M.D. Fla. Jan. 24, 2018). Order dismissing plaintiff’s TILA and RESPA claims with prejudice on finding of res judicata (both claim and issue preclusion).

## Areas of Focus

### Practices

- Real Property Litigation
- Title Insurance
- Appellate & Trial Support
- Banking, Commercial, and Consumer Finance
- Cannabis Law
- Creditors’ Rights and Bankruptcy
- Development
- Eminent Domain
- Environmental, Land Use & Development Approvals and Litigation
- Institutional Investment and Finance
- Litigation and Trials
- Real Estate

### Industries

- Banking, Commercial, and Consumer Finance
- Real Estate

# Insights

03.25.2024

Real Property, Financial Services, & Title Insurance Update: Week Ending March 22, 2024

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02.14.2024

My House Was Just Stolen: Title Fraud, The Problem, And The Beginning Of A Solution  
*Actionline, Real Property Probate and Trust Law Section of The Florida Bar*

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02.13.2024

The Docket: N.Y. Court Holds Insurer's Claim Timely in Foreclosure Action  
*Title News, American Land Title Association*

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07.30.2020

Florida Governor Limits Mortgage Foreclosure and Eviction Relief to Non-Payment Defaults and Single-Family Mortgagors and Residential Tenants

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03.17.2020

COVID-19: What Can a Lender Do to Prepare for the Inevitable Defaults?

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11.01.2019

The History of Condominium Development Rhymes: Contract Purchasers Are Again Seeking to Get Out of Purchasing Condominium Units

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06.19.2017

The New 2016 ALTA Commitment with Florida Modifications: Expressing the Limitations on Liability

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05.25.2017

The New 2016 ALTA Commitment: Expressing Limitations on Liability

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10.07.2016

Surrendering Your Property in Bankruptcy Means You Must Actually Surrender It

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10.01.2016

10 Lawsuits You Can't Ignore

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06.23.2016

The Docket: Arizona Supreme Court Rules Against Insurer on Date of Loss Issue

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04.26.2016

CFPB Director Offers Cold Comfort on TRID

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03.19.2016

The TRID Rule: Impact and Consequences on the Residential Mortgage Lending Market

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01.28.2016

Tennessee Supreme Court Ruling in MERS Case May Muddle Marketable, Insurable Title After Tax Deed Sale

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09.28.2015

Florida Court Confirms Substantial Compliance Standard Concerning Foreclosures

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07.31.2015

Florida's Second District Court of Appeal Confirms Substantial Compliance is the Standard for Evaluating Conditions Precedent to Mortgage Foreclosures

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07.01.2015

Florida's Original Real Estate Law Hornbook – The Uniform Title Standards

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06.15.2015

Eleventh Circuit: Enforcement of a Security Interest Is Not Debt Collection

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12.23.2014

The Docket: U.S. Seventh Circuit Rules 'Complete Defense' Does Not Apply to Title Insurance

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01.01.2014

Attorney-Client Privilege and Work Product Doctrine in the Context of A Title Insurance Claim: A Case Study

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07.01.2012

Top 10 Lawsuits Impacting the Title Industry

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07.01.2012

Are Consequential Damages Recoverable Under a Title Insurance Policy for the Time It Takes to Attempt to Cure a Title Defect?

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06.28.2012

Equitable Subrogation and Mortgage Lien Priority in Florida

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05.15.2012

The Docket: Federal District Court Ruling in Texas Provides Lesson in Curing Title

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## News

05.14.2024

Christopher Smart Quoted in The Real Deal: “Jockey Club Unit Owners Hit With \$347K Judgment in Suit Tied to Common Areas”

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04.03.2024

Carlton Fields’ Christopher Smart and Scott Pence Named Fellows of the American College of Real Estate Lawyers

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06.06.2023

Christopher Smart Receives Service Award From Florida Bar’s Real Property Section

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03.23.2023

Carlton Fields Adds Litigator Blair Hedges in Orlando

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07.01.2022

Carlton Fields Named Top Firm and Attorneys Named Legal Leaders in Florida Trend's 2022 "Legal Elite"

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06.11.2020

Apeiron at the Jockey Club Developer Wins Key Ruling from Appeals Court

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06.05.2020

Third District Court of Appeal Upholds Carlton Fields Client Apeiron's Real Property and Development Rights

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08.22.2019

Carlton Fields Obtains Directed Verdict in Real Property Lawsuit in Federal Court

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08.19.2019

Media Spotlights Carlton Fields' Client Win in Complex Title Dispute

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08.13.2019

Carlton Fields Clients Win Complex Title Dispute Over Sea Bonay Beach Resort in Hillsboro Beach

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03.27.2019

Carlton Fields' Christopher Smart Wins Award for Real Estate Thought Leadership

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08.15.2018

Green Light for Miami Developer

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07.09.2018

Super Lawyers Honors 81 Carlton Fields Attorneys on 2018 Florida "Super Lawyers" and "Rising Stars"

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06.29.2018

Carlton Fields Ranked Top Firm and Attorneys Named Legal Leaders in Florida Trend Magazine's 2018 "Legal Elite"

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08.03.2017

BTI Ranks Carlton Fields among Firms with Best Insurance Industry Client Relationships

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07.11.2017

Judge Rules in Favor of Firm Client Apeiron Miami, LLC of Development at Jockey Club

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06.23.2017

Florida Super Lawyers Ranks 92 Carlton Fields Attorneys as 2017 “Super Lawyers” and “Rising Stars”

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06.21.2017

Carlton Fields Ranked Top Firm and Attorneys Named Legal Leaders in Florida Trend Magazine’s 2017 “Legal Elite”

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06.01.2017

The 2016 ALTA Commitment: Expressing Limitations on Liability

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## Recognition

- John Arthur Jones Annual Service Award, The Florida Bar Real Property, Probate, and Trust Law Section (2023)
- Florida Legal Elite, *Florida Trend Magazine* (2017–2020, 2022)
- Florida Super Lawyers, *Super Lawyers Magazine* (2013–2019, 2023)
- *The Best Lawyers in America*, Real Estate Litigation, Real Estate Law (2020–2024)

## Professional & Community Involvement

- American College of Real Estate Lawyers
- American Land Title Association
  - Title Claims Committee (2011–present)
  - State Legislative/Regulatory Action Committee (f/k/a Real Property Records Committee) (2015–present)
- Florida Land Title Association (2007–present)
  - Regular Presenter, FLTA Claims Roundtable

- The Florida Bar
  - Civil Procedure Rules Committee (2024–present)
  - Code and Rules of Evidence Committee (2020–2024)
  - Real Property, Probate, and Trust Law Section
    - Title Issues and Standards Committee (2009–present)
      - Chair (2012–2019)
      - Vice Chair (2009–2011)
    - Real Property Litigation Committee
      - Vice Chair (2019–2020)
    - Title Insurance & Title Insurance Liaison Committee
      - Chair (2022–present)
      - Vice Chair (2021–2022)

## Speaking Engagements

- “Addressing Financial Abuse of Vulnerable Adults: Florida Real Estate Fraud,” ABA 36th Annual Real Property, Trust, and Estate National CLE Conference, Washington, D.C. (May 9, 2024)
- “Title Counsel Committee Meeting,” American Land Title Association Spring Meeting, Scottsdale, AZ (April 15, 2023)
- “Florida Water Rights and Title Pirates,” Florida Land Title Association Claims Roundtable (April 5, 2024)
- “Determining Title Insurance Loss: Diminution in Value,” Carlton Fields (January 25, 2024)
- “Title Counsel Committee Meeting,” American Land Title Association Fall Meeting, Colorado Springs, CO (October 8–9, 2023)
- “Florida Water Law and Title Pirates,” 2023 FLC Destination Education Conference, Old Republic National Title Insurance Co. (October 4, 2023)
- “Preservation of Easements and Covenants After AFP 103 – Potential Methodologies to Allow the Granting and Reservation to Grant Future Easements on Condominium and HOA Property,” 48th Annual Ralph E. Boyer Institute on Condominium and Cluster Development, University of Miami School of Law (September 29, 2023)
- “Handling Title Insurance Claim Litigation and Suits Against Title Insurance Companies,” Fidelity National Title Group (August 16, 2023)
- “Florida’s Real Property Fraud Prevention Law,” 43rd Annual Legislative and Case Law Update of the Real Property, Probate, and Trust Law Section of the Florida Bar (July 21, 2023)
- “The Inflexible Doctrine of Merger in Easements,” Real Property Litigation Symposium, The Florida Bar Continuing Legal Education Committee and the Real Property, Probate, and Trust Law Section, Orlando, FL (May 12, 2023)

- "MRTA Gets a Makeover: Recent Revisions to Chapter 17 of the Uniform Title Standards," The Real Property, Probate, and Trust Law Section of The Florida Bar (January 10, 2023)
- "Easements and the Doctrine of Merger," Advanced Topics Affecting Easements, The Real Property, Probate, and Trust Law Section of The Florida Bar (November 16, 2022)
- "The Act: Chapter 712 and Marketable Title," Florida Land Title Association Claims Roundtable (June 24, 2022)
- "MRTA Gets a Makeover," Title Issues and Standards Committee of the Real Property, Probate, and Trust Law Section of The Florida Bar (April 1, 2022)
- "Proposed Orders: Blessing or Burden?," Real Property Litigation Committee of the Real Property, Probate, and Trust Law Section of The Florida Bar (November 5, 2021)
- "Florida's Centerline Rule of Construction: Platted Waterways and Palpable Fraud," Title Issues and Standards Committee of the Real Property, Probate, and Trust Law Section of The Florida Bar (July 22, 2021)
- "Florida's New Summary Judgment Standard and Rule 1.510," The Florida Bar Continuing Legal Education Committee and the Real Property, Probate, and Trust Law Section (June 30, 2021)
- "The Federal Summary Judgment Standard and Real Property Litigation," Florida's Federal Judgment Standard – Strategic Considerations for Real Property and Construction Litigation, The Florida Bar Continuing Legal Education Committee and the Real Property, Probate, and Trust Law Section (March 23, 2021)
- "Florida's Uniform Title Standards: One of the Best Resources for the Real Estate Practitioner," Real Property, Probate, and Trust Law Section of The Florida Bar (September 23, 2020)
- "Making Your Real Estate Transactions Easier: Correction of Obvious Errors in Deeds and Elimination of Subscribing Witnesses in Leases," 40th Annual Legislative & Case Law Update for the Real Property, Probate, and Trust Law Section of The Florida Bar (August 21, 2020)
- "Privacy Update for the Mortgage Industry," Carlton Fields Client Presentation, Virginia Beach, VA (March 4, 2020)
- "Double Indemnity? What Every Florida Real Estate Professional Should Understand About Title Insurance," Real Property, Probate, and Trust Law Section of The Florida Bar (December 18, 2019 & January 14, 2020)
- "Florida's Marketable Record Title Act," Fidelity National Title Group (October 29, 2019)
- "Title Counsel Committee Meeting," American Land Title Association Fall Meeting, Austin, TX (October 18–22, 2019)
- "Quieting Title to Real Property in Florida," Legal Services of North Florida Inc. (September 26, 2019)
- "Introduction to Understanding Title Insurance," Executive Council Meeting and Convention, Real Property, Probate, and Trust Law Section of The Florida Bar, Clearwater Beach, FL (May 30, 2019)
- "Title Counsel Committee Meeting," American Land Title Association Spring Meeting, Chicago, IL (May 20–21, 2019)

- "Annual Title Insurance Case Law Update: 2018-2019," Florida Land Title Association Claims Roundtable Presentation (April 26, 2019)
- "Understanding Title Insurance" and "The 2016 ALTA Commitment," Title Law: A to Z, Tampa, FL (June 4, 2018)
- "Title Counsel Committee Meeting," American Land Title Association Spring Meeting, Nashville, TN (April 10–11, 2018)
- "Annual Title Insurance Case Law Update: 2017-2018," Florida Land Title Association Claims Roundtable Presentation (April 5, 2018)
- "How I Learned to Stop Worrying and Love the 2016 ALTA Commitment, and Why You Should Too," Fidelity National Title Group (March 1, 2018)

## Credentials

### Education

- University of Florida Fredric G. Levin College of Law (J.D., high honors, 2002)
- Johns Hopkins University (M.A., 1999)
- University of Florida (M.A., 1994)
- George Mason University (B.A., with distinction, 1991)

### Court Admissions

- U.S. District Court, Middle District of Florida
- U.S. District Court, Northern District of Florida
- U.S. District Court, Southern District of Florida
- U.S. Court of Appeals, Eleventh Circuit

### Bar Admissions

- Florida

### Languages

- Spanish