



# Real Property Case Law Update

Recent Opinions of Interest to  
Real Property Litigators and Practitioners

**Week Ending November 23, 2012**

*By the Carlton Fields Real Property Litigation Practice Group*

For more information about Carlton Fields' Real Property Litigation Practice Group, please visit us at:  
[Real Property Litigation](#)

## CONTENTS

Selection of Real Property Litigation Case Summaries

- I. Florida State Cases
- II. 11th Circuit Cases
- III. Title Insurance Cases
- IV. The Weekly Update Team

## I. FLORIDA STATE CASES – SARA WITMEYER

- **Standing:** purchaser at foreclosure sale lacked standing to appeal order vacating sale because purchaser had conveyed interest to a separate entity while motion to vacate was pending and thus no longer had interest in the property – [Castelo Devs., LLC v. Rawls](#), No. 3D12-1332 (Fla. 3d DCA Nov. 21, 2012) (granting motion to dismiss appeal)
- **Statute of Limitations:** trial court erred in dismissing with prejudice buyers' action for return of deposit relating to 2005 real estate transaction when statute of limitations defense could not be conclusively established as matter of law from face of complaint and findings needed to be based on more developed factual record – [Xavier v. Leviev Boymelgreen Marquis Developers, LLC](#), No. 3D11-549 (Fla. 3d DCA Nov. 21, 2012) (reversing order dismissing amended complaint with prejudice)
- **Redemption:** right of redemption is controlled by section 45.0315, Florida Statutes, which is exclusive; therefore, mortgagors who failed to pay amount of final judgment were incorrect that their redemption rights had been thwarted by mortgagee's failure to credit post-judgment rentals to amount due or to require payment of amount of attorney's fees – [Sedra Family Ltd. P'ship v. 4750, LLC](#), No. 4D12-331 (Fla. 4th DCA Nov. 21, 2012) (affirming denial of motion to vacate foreclosure sale)
- **Intervention:** trial court did not abuse discretion in denying tenant's post-judgment motion to intervene in foreclosure in light of facts that tenant had no independent right of redemption and tenant had not been made party to original proceedings and thus still had possessory interest in property – [Sedra Family Ltd. P'ship v. 4750, LLC](#), No. 4D12-331 (Fla. 4th DCA Nov. 21, 2012) (affirming denial of motion to intervene)
- **Landlord-Tenant:** city was not prohibited by section 180.135, Florida Statutes from declining to contract with tenants for water utility services and restricting service agreements to property owners – [Jass Props., LLC v. City of N. Lauderdale](#), No. 4D11-4830

(Fla. 4th DCA Nov. 21, 2012) (affirming final summary judgment)

- **Default: new default under mortgage based on different act or date of default not alleged in action dismissed with prejudice creates a new cause of action; therefore, mortgagee is not precluded from instituting new foreclosure action** – [Star Funding Solutions, LLC v. Kronides](#), No. 4D11-3378 (Fla. 4th DCA Nov. 21, 2012) (affirming order denying motion to vacate order dismissing foreclosure with prejudice)

## II. 11TH CIRCUIT CASES – JIN LIU

- **Good Faith and Fair Dealing: under Georgia law, absent a specific contractual obligation for lender to preserve value of borrower’s property, borrower may not sue lender for breach of good faith and fair dealing based on allegation that lender’s practices in dealings with other borrowers caused a drop in borrower’s property value** -- [Irving v. Bank of America](#), Case No. 12-10712 (11th Cir. Nov. 19, 2012) (affirming district court’s grant of motion to dismiss)

## III. TITLE INSURANCE CASES - CHRIS SMART

- **Agency Agreements: insurer’s claim against its agent pursuant to their agency agreement is a claim for indemnification, and the statute of limitations does not begin to run on the claim until the agent refuses to indemnify the insurer** -- [Old Republic Nat. Ins. Co. v. Panella](#), Case No. A12A1242 (Ga. App. Nov. 20, 2012) (reversing summary judgment)

## THE WEEKLY UPDATE TEAM



Dana Blunt  
[dblunt@carltonfields.com](mailto:dblunt@carltonfields.com)  
813.229.4156  
[bio](#)



Stefanie Lincoln  
[slincoln@carltonfields.com](mailto:slincoln@carltonfields.com)  
813.229.4148  
[bio](#)



Jin Liu  
[jliu@carltonfields.com](mailto:jliu@carltonfields.com)  
813.229.4209  
[bio](#)



Brian B. Vavra  
[bvavra@carltonfields.com](mailto:bvavra@carltonfields.com)  
813.229.4385  
[bio](#)



Ilan Nieuchoicz  
[inieuchoicz@carltonfields.com](mailto:inieuchoicz@carltonfields.com)



Lauren Sembler  
[lsembler@carltonfields.com](mailto:lsembler@carltonfields.com)  
813.229.4384



Chris Smart  
[csmart@carltonfields.com](mailto:csmart@carltonfields.com)  
813.229.4142



Sara Witmeyer  
[switmeyer@carltonfields.com](mailto:switmeyer@carltonfields.com)  
813.229.4267

305.539.7381

[bio](#)

[bio](#)

[bio](#)

[bio](#)

## CARLTON FIELDS

Recent opinions of interest to real property litigators and practitioners is provided periodically by the Real Property Litigation Practice Group of Carlton Fields for the attorneys of the firm. Carlton Fields attorneys may pass these updates on to clients and friends of the firm. Any recipient of these updates outside the firm is reminded, however, that they are not intended as legal advice or as a substitute for legal consultation in a particular case or circumstance. Federal statutes require unsolicited e-mails in certain categories to be labeled as advertisements, and to offer the ability to "opt out." We doubt that this falls within those categories, but regulations have not been adopted, and the situation is ambiguous. If those laws do apply, they require the following disclosure: This communication is an advertisement. If you do not wish to receive such communications from Carlton Fields in the future, either reply to the e-mail address from which you received it, or e-mail [optout@carltonfields.com](mailto:optout@carltonfields.com), and we will not send them to you.

[www.carltonfields.com](http://www.carltonfields.com)

Atlanta • New York • Miami • Orlando • St. Petersburg • Tallahassee • Tampa • West Palm Beach

Copyright 2012 Carlton Fields, P.A.